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Transcript of Richard J. Langham, Designated Representative

Date: April 16, 2024

Case: Jardaneh, et al. -v- Garland, et al.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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MUTASEM JARDANEH, et al., :
Plaintiffs, :
v. : Case No.
MERRICK B. GARLAND, et al., : 8:18-cv-02415-PX
Defendants. :
----- X

Deposition of THE FEDERAL BUREAU OF INVESTIGATION,
by and through its Designated Representative
RICHARD J. LANGHAM
Conducted Virtually
Tuesday, April 16, 2024
9:36 a.m. EDT

Job No.: 531637
Pages 1 - 329
Reported by: Debra A. Whitehead

1 Deposition of RICHARD J. LANGHAM, conducted
2 virtually.

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5 Pursuant to notice, before Debra Ann Whitehead,
6 E-Notary Public in and for the State of Maryland.

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A P P E A R A N C E S

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P R O C E E D I N G S

RICHARD J. LANGHAM,

having been duly sworn, testified as follows:

EXAMINATION BY COUNSEL FOR PLAINTIFFS

BY MR. ABBAS:

Q Please state and spell your name, for the record.

A Sure. It's Richard J. Langham. Last name is spelled L-A-N as in November G-H-A-M as in Mike.

Q You understand you're here today not as Mr. Langham, but as the FBI?

A I understand that, yeah.

Q And you understand that any testimony you provide today is binding on the agency you're testifying for?

MS. POWELL: Objection, to the extent it calls for a legal conclusion.

A Yes.

MR. ABBAS: Let's, if we could pull up Exhibit A, which the 30(b)(6) notice.

(FBI Exhibit 1 marked for identification

1 and is attached to the transcript.)

2 Q We're going to go to Page 3 of Exhibit A.
3 Exhibit A is the 30(b)(6) notice. If we could
4 scroll down to the third page.

5 Mr. Langham -- am I pronouncing your name
6 correctly, Mr. Langham?

7 A Yes.

8 Q Mr. Langham, have you seen this list of
9 topics before?

10 A I believe so. Could I go -- could you go
11 up, just to make sure it's in the context.

12 Yes, I've seen that before.

13 Q Great. Let's go back to Page 3. We're
14 going to talk about Topic 6 first.

15 Do you see where it says, "The contents
16 and application of the reasonable suspicion
17 standard"?

18 A I do, yes.

19 Q Are you familiar with something called
20 the reasonable suspicion standard?

21 A I am.

22 Q You're familiar with it in the context of

1 the watchlist?

2 A Yes, I am.

3 MR. ABBAS: So now let's go to Exhibit B,
4 the RFA responses. We'll take a look at that in a
5 second.

6 (FBI Exhibit 2 marked for identification
7 and is attached to the transcript.)

8 Q Okay. These are the Terrorism Screening
9 Center's responses to some requests that we made.

10 I want to go to the bottom of Page 2.
11 The bottom of Page 2. I'll just kind of guide you
12 through this.

13 So at the bottom of Page 2 you see where
14 it says, "Admit that the 2023 Watchlisting
15 Guidance did not amend the TSDS inclusion
16 standard"?

17 Do you see that?

18 A I do see that.

19 Q We just referred to a moment ago the
20 reasonable suspicion standard.

21 You understand that to be the TSDS
22 inclusion standard. Correct?

1 MS. POWELL: Objection. Vague.

2 A I do, yes.

3 Q So now we're going to look, Mr. Langham,
4 at how the government responded to that request
5 for admission. Okay? So that's on the next page,
6 on Page 3. If we could scroll down in the middle
7 of that page.

8 I want you to review from Response to the
9 end of the page. And then I'm going to ask you a
10 bunch of questions about this.

11 So tell me -- read it to yourself, tell
12 me when you're done, and then I'll ask you some
13 questions about it.

14 MS. POWELL: Make sure you have him
15 scroll down so you can read the rest.

16 A I have read through Redress of
17 Grievances. Is that where you wanted me to stop?

18 Q Yeah. Perfect.

19 Okay. Do you see that second sentence
20 where it says, "In fact, the 2023 Watchlisting
21 Guidance did revise the reasonable suspicion
22 standard for inclusion in the TSDS"?

1 MS. POWELL: We actually can't see that
2 part on the screen I don't think.

3 A Yeah, can you go up a little bit?

4 MR. ABBAS: Scroll up a little bit. Up.

5 A There we go.

6 Q Do you see that second sentence?

7 A Yes.

8 Q Is that accurate?

9 A My understanding of the change in the
10 2023 watchlisting guidance is that it was for
11 clarity and it wasn't a substantive change.

12 Q We're going to get to all those,
13 Mr. Langham. I think we need to start with the
14 questions I'm asking you.

15 A Okay.

16 Q So the 2023 Watchlisting Guidance did
17 revise the reasonable suspicion standard.

18 Correct?

19 A That's what it says, yes.

20 Q Yeah, I know that -- I'm asking if that's
21 accurate. Okay? I'm talking to the Federal
22 Bureau of Investigations, and I'm asking a basic

1 question about whether something else provided by
2 somebody else is accurate. Okay?

3 Did the 2023 Watchlisting Guidance revise
4 the reasonable suspicion standard for inclusion in
5 the TSDS?

6 MS. POWELL: Objection. Asked and
7 answered.

8 A Yes, it did.

9 Q Who decided to revise the inclusion
10 standard for the TSDS?

11 MS. POWELL: Objection. Vague.

12 A I don't know.

13 MR. ABBAS: I'm going to object. This is
14 a basic question about the governing standard for
15 inclusion on the watchlist. And if the witness
16 has no information at all about why the only
17 change that has ever been made to the inclusion
18 standard was made, that's a really large deficit
19 between our expectations and the notice and what
20 the witness is prepared to testify.

21 Q You don't know, do you have any testimony
22 to offer today about why the 2023 Watchlisting

1 Guidance was amended?

2 MS. POWELL: I'm going to object to
3 the --

4 MR. ABBAS: I'm sorry, that was an
5 unclear question. Let me try again.

6 Q Do you have any testimony to offer about
7 why the 2023 Watchlisting Guidance revised the
8 reasonable suspicion standard for inclusion in the
9 TSDS?

10 MS. POWELL: Objection. Vague.

11 A I do. It's my understanding that the
12 change was made to make the standard more clear.

13 Q You don't know who made that change or
14 who suggested that the change needed to be made?

15 MS. POWELL: Objection, to the extent it
16 calls for deliberate process privileged
17 information, that would cover who suggested it in
18 the first place.

19 I think I'm going to instruct the witness
20 not to answer as phrased.

21 Q How did -- the Watchlisting Guidance is a
22 document. Correct?

1 A Yes.

2 Q It's not like an administrative body or
3 it's not an agency that can act. Right?

4 MS. POWELL: Objection. Vague.

5 A The guidance itself -- the guidance
6 itself is a document and text, yes.

7 Q So the Watchlisting Guidance did not
8 revise itself. Right?

9 A Right.

10 Q So what agency proposed that the
11 inclusion standard for the watchlist should be
12 revised?

13 MS. POWELL: Objection as phrased.
14 You're asking for who proposed it, which is
15 covered by the deliberative process privilege.

16 Q Let me rephrase. What agency initiated
17 the process of revising the inclusion standard for
18 the watchlist?

19 A So my understanding is there's a
20 Watchlisting Advisory Council, and that they
21 recommend changes with regard to watchlisting.
22 And then that -- whether or not to adopt those

1 changes is determined at a deputy's meeting.

2 Q A deputy's meeting of the National
3 Security Council.

4 Is that right?

5 A Yes.

6 Q Do you see that indented paragraph that
7 begins with, "For purposes of nominating"?

8 A I do.

9 Q Is that the current inclusion standard
10 for the watchlist?

11 MS. POWELL: Objection. Vague.

12 A That is the current watchlisting -- the
13 reasonable suspicion standard as I know it.

14 Q Is this document the only place the
15 federal government has acknowledged a revision
16 publicly to the watchlist inclusion standard?

17 MS. POWELL: Objection as to scope and
18 vagueness.

19 But you can answer.

20 A I don't know where else it's been
21 published.

22 Q Sitting here today, you can't point to

1 another place in the entire universe where this
2 change to the inclusion standard has been
3 published, or made available by the federal
4 government anyway. Right?

5 MS. POWELL: Objection. Asked and
6 answered.

7 A I don't know where else it's been
8 published.

9 Q And I'm asking a slightly different
10 question, Mr. Langham, to ensure that I have the
11 extent of your knowledge. And so this is a little
12 bit of a different question.

13 You can't identify another place besides
14 this document where the government has disclosed
15 that it's revised the watchlist inclusion
16 standard. Right?

17 MS. POWELL: Objection. Asked and
18 answered.

19 A So I'm familiar with the reasonable
20 suspicion standard. It's published here. I don't
21 know where else or in what other documents it's
22 been published to date.

1 Q Do you know whether or not it's been
2 published in any other documents besides this one?

3 MS. POWELL: Same objection.

4 A I would speculate that it has been, but I
5 don't know the answer to that.

6 Q What is the basis for your speculation
7 that it has been published in other documents
8 besides this one?

9 MS. POWELL: Objection. Calls for
10 speculation.

11 A Because to operate properly this
12 definition needs to be known, and people in the
13 process need to be familiar with it.

14 Q What did the FBI do to make sure that
15 this new definition of reasonable suspicion was
16 known by the many people submitting nominations,
17 reviewing nominations, and receiving the
18 information from the watchlist itself for
19 screening purposes?

20 MS. POWELL: Objection. Vague and
21 compound.

22 A Could you repeat the question, please.

1 Q What did you do at the FBI to let people
2 know that there was a change to the inclusion
3 standard?

4 A So I don't know specifically what the FBI
5 did to familiarize the work force with this, with
6 this definition, the revised definition.

7 MR. ABBAS: I'm going to object again
8 that the witness is unprepared for the basic facts
9 that regard this deposition.

10 MS. POWELL: Disagree, Mr. Abbas. We are
11 well afield from the scope here as to sort of how
12 they get out the Watchlisting Guidance and
13 standards. He is here -- the topic I believe was
14 the reasonable suspicion standard.

15 Q What's the change, what's been changed,
16 can you tell me, Mr. Langham, what the revision
17 was in 2023 to the inclusion standard for the
18 watchlist?

19 MS. POWELL: Objection. Vagueness, and
20 asked and answered.

21 A I believe the phrase "related to" has
22 been removed from this current definition that

1 existed in the previous definition.

2 Q Why did that phrase get removed from the
3 inclusion standards definition?

4 MS. POWELL: Same objections.

5 A So like I said, it was to make the
6 standard more clear.

7 Q Did the FBI have information that the
8 standard was unclear before it made this revision
9 to the watchlist inclusion standard?

10 MS. POWELL: Objection. Vagueness.
11 Ambiguity.

12 But you can answer.

13 A I don't know that it was the FBI that
14 prompted this change.

15 Q Who prompted -- what agency prompted this
16 change to the watchlist inclusion standard?

17 MS. POWELL: Objection, to the extent it
18 calls for deliberative process privileged
19 information.

20 A So my understanding is there is a
21 Watchlist Advisory Committee who makes
22 recommendations of changes to matters related to

1 watchlisting, and then that goes to a deputy's
2 committee for review and approval.

3 Q You said the Watchlisting Advisory
4 Committee. Is that different than the
5 Watchlisting Advisory Council?

6 A No; it may be the same thing, the WLAC.

7 Q Are you sure about that? Are you sure
8 it's the WLAC that recommended this revision and
9 not the Watchlisting Advisory Committee?

10 A Like I said, I am not sure who made this
11 specific recommendation. I just know in general
12 that's how it works.

13 Q You don't know who recommended this
14 revision to the watchlist inclusion standard.

15 Correct?

16 MS. POWELL: And if he did know I would
17 instruct him not to answer, to be clear on the
18 grounds of the deliberative process privilege.

19 MR. ABBAS: Again --

20 MS. POWELL: Just to make sure I
21 clarified for the record.

22 MR. ABBAS: Again, I'm just clarifying

1 what he knows that I can ask him about.

2 That's what I'm doing.

3 MS. POWELL: Okay.

4 A Sure.

5 MS. POWELL: Okay.

6 A As I said, I -- this is a relatively
7 minor change to make the reasonable suspicion
8 standard more clear. And I do not know who
9 specifically initiated that change.

10 Q You don't know who or from what agency
11 this change was proposed. Correct?

12 MS. POWELL: Objection. Asked and
13 answered.

14 A I do not.

15 Q And your understanding of why the change
16 was made is it was simply a clarity edit to the
17 watchlist inclusion standard?

18 Is that right?

19 MS. POWELL: Objection. Asked and
20 answered.

21 A Yes, it was -- my understanding is it was
22 not a substantive change but rather a change to

1 make the standard more clear.

2 Q What's the basis of your understanding
3 that this was not a substantive change?

4 MS. POWELL: Objection. Actually, I
5 think you can answer, to the extent you know.

6 A So in preparation for this deposition, I
7 reviewed documents to include documents about the
8 reasonable suspicion standard.

9 Q Okay. Let's go to the overview document.
10 Let's look at the old standard real quick.

11 MR. ABBAS: Can we go to, I think it's
12 called the overview document. We might have put
13 it in there. Make that Exhibit C. Or Exhibit 3.

14 (FBI Exhibit 3 marked for identification
15 and is attached to the transcript.)

16 Q Okay. This is the government's overview
17 document.

18 MR. ABBAS: Let's go to the top of Page
19 4. I'm sorry. One more page down. I apologize.
20 Page 5.

21 Q Do you see that first paragraph,
22 Mr. Langham, just that first sentence, "The U.S.

1 government continuously evaluates its standards
2 for inclusion in the TSDB and its subset lists."

3 Do you see that?

4 A Yes, I do.

5 Q Is that true?

6 A I understand it to be true, yes.

7 Q How does the FBI evaluate the standards
8 for inclusion in the watchlist?

9 MS. POWELL: Objection, to the extent it
10 calls for deliberative process privileged
11 information.

12 But you can answer to the extent you
13 know.

14 A So my understanding is it's evaluated for
15 efficacy and by other means.

16 Q I don't know what that means,
17 Mr. Langham, so I'm going to ask you some
18 questions about that.

19 When you say "it's evaluated for
20 efficacy," what do you mean?

21 A So to the extent the FBI would have a
22 role within the U.S. government for evaluating the

1 standards of inclusion, I think we would look at
2 the language and determine whether or not the
3 result was the intended result.

4 Q Has the FBI done that?

5 MS. POWELL: Objection to the extent it
6 calls for deliberative process privileged
7 information.

8 A I don't know if the FBI specifically has
9 done that.

10 MR. ABBAS: I'm going to object. Another
11 basic fact that the witness apparently has no
12 testimony to offer about.

13 Q You also said in addition to efficacy
14 that it's evaluated by other means.

15 Is that right? Am I recalling the answer
16 correctly?

17 A Yes, that's right.

18 Q What did you mean by "other means"?

19 A So in addition, for example, to efficacy,
20 we would look at clarity, is it easy to
21 understand. And then if it wasn't, we would
22 potentially propose a recommendation for change to

1 the standard to make it more clear.

2 Q Was that the sole basis of the decision
3 to revise the watchlist inclusion standard?

4 MS. POWELL: Objection, to the extent it
5 calls for deliberative process privileged
6 information.

7 But you can answer, if you know.

8 A So I don't know that it was the sole
9 reason. My understanding is that it was the most
10 significant reason, is to make the standard more
11 clear.

12 Q I really need to know all the reasons.
13 So do you know of any other reasons --

14 A I don't --

15 Q -- why --

16 A I don't.

17 Q Mr. Langham, I appreciate. For the court
18 reporter's sake, I'm going to finish my
19 question --

20 A Sure.

21 Q -- and if you can wait until the end.

22 And I have an odd cadence, Mr. Langham.

1 And so I'm not trying to trick you. I have an odd
2 cadence, so I apologize in advance for that.

3 You don't know whether there were
4 multiple reasons or one reason why the watchlist
5 list inclusion standard was revised. Correct?

6 MS. POWELL: Objection. Asked and
7 answered.

8 A I'm sorry, could you repeat the question?

9 MR. ABBAS: Could we read back the
10 question, is that possible? Thank you.

11 (Pending question read.)

12 A Correct.

13 Q The one reason you're aware of is this
14 clarity. Correct?

15 MS. POWELL: Objection. Asked and
16 answered.

17 A That is correct.

18 Q What was the basis for the FBI -- did the
19 FBI make a conclusion that the watchlist inclusion
20 standard was unclear?

21 MS. POWELL: Objection to the extent it
22 called for deliberative process privileged

1 information.

2 A I don't know that the FBI specifically
3 concluded that it was unclear. I think like is
4 referred to here and like I previously said, many
5 other agencies and entities weigh into this.

6 Q Did the FBI weigh into this?

7 MS. POWELL: Objection. Asked and
8 answered.

9 And I would instruct the witness not to
10 answer on grounds of deliberative process
11 privilege.

12 Q Do you know whether the FBI reached a
13 conclusion on not about the clarity of the prior
14 watchlist inclusion standard?

15 MS. POWELL: Objection to the extent it
16 calls for deliberative process privileged
17 information.

18 But I think you can answer yes or no as
19 to whether or not you know.

20 A I'm sorry. Could you repeat it once
21 more.

22 Q Do you know whether or not the FBI

1 reached a conclusion about the clarity of the
2 watchlist inclusion standard?

3 MS. POWELL: Same objection, but you can
4 answer yes or no.

5 A I do not.

6 MR. ABBAS: I'm going to make the same
7 objection. But these are basic facts about the
8 standard, and the designee doesn't appear to have
9 adequate testimony to answer the questions.

10 MS. POWELL: We disagree.

11 Q Read the rest of that first paragraph on
12 Exhibit C. And let me know when you're done. I'm
13 going to ask you -- I'll just ask you this
14 question ahead of time as you're reading it.

15 Does this accurately reflect the old
16 pre-2023 Watchlisting Guidance inclusion standard?

17 A This -- yeah, I'm done. And this looks
18 like the old pre-2023 definition -- sorry,
19 reasonable suspicion standard.

20 Q Guide me to the part of the old standard
21 that has been excised.

22 A Okay. The beginning of the

1 second-to-last line, the phrase "related to" has
2 been removed for the 2023 standard.

3 Q And you're testifying today that those
4 three words "or related to" had no substantive
5 meaning in the pre-2023 watchlist inclusion
6 standard?

7 MS. POWELL: Objection. Vague, and
8 mischaracterizes prior testimony.

9 But you can answer.

10 A Yeah, so it's just more clear if you
11 remove that phrase.

12 Q What makes it more clear? I want to
13 understand. What's the -- what's unclear about
14 the pre-2023 inclusion standard that's made clear
15 by the amendment?

16 A So it's an economy of words. It's just
17 to make it more straightforward. It's
18 unnecessary.

19 Q You know, Mr. Langham, I'm a lawyer and
20 so I read standards for a living. You know,
21 that's what I do. And so are you a lawyer? Are
22 you --

1 A No. No, sir, I'm not.

2 Q Okay. Just a lot of folks at the FBI
3 have those JDs.

4 So when I read "or related to," it seems
5 to have an independent meaning to me, those words.

6 Are you saying that there's no
7 independent meaning to "or related to"?

8 Is that what you're testifying here?

9 MS. POWELL: Objection. Vagueness.

10 You can answer.

11 A So I think, just looking at it here the
12 way it's constructed, so when you talk about,
13 preparation for, in aid of, et cetera, that's
14 already describing in related to. Like, those are
15 ways that it's related to. So then "or related
16 to" is not, is unnecessary.

17 Q What gave -- I'm sorry, let me back up.

18 So what do you know about the process by
19 which it was decided that the watchlist inclusion
20 standard would be revised?

21 MS. POWELL: Objection. Vagueness. And
22 to the extent it calls for deliberative process

1 privileged information, and to the extent it
2 doesn't call for deliberative process privileged
3 information, I think it's asked and answered.

4 A So as I stated, my understanding of
5 changes to watchlisting-related guidance in
6 matters is that the WLAC make recommendations for
7 changes, and then those changes are deliberated
8 and agreed upon, or not agreed upon, at a deputy's
9 committee.

10 Q And these changes were agreed upon?

11 MS. POWELL: Objection, to the extent it
12 called for deliberative process privileged
13 information. I think the witness can answer as to
14 the process in general.

15 A Apparently, yes.

16 Q Did the Watchlisting Advisory Council
17 offer a recommendation -- an explanation for its
18 recommendation as to why the deputy's committee of
19 the National Security Council should adopt a
20 different watchlist inclusion standard?

21 MS. POWELL: Objection. Calls directly
22 for deliberative process privileged information.

1 I'd instruct the witness not to answer.

2 Q Did the FBI notice some problem in how
3 the watchlist inclusion standard was being
4 administered that it sought to address in the 2023
5 revision to the inclusion standard?

6 MS. POWELL: Objection as to scope of the
7 deposition, and objection to the extent it calls
8 for deliberative process privileged information,
9 and to the extent it's asked and answered.

10 A So like I said, I'm not aware that the
11 FBI prompted this specific change.

12 Q You don't know who or what -- I just want
13 to make sure. I understand that.

14 A Yeah, I don't know specifically.

15 Q Who would know? Who would know where the
16 origin started for this 2023 watchlist inclusion
17 standard revision?

18 A Potentially members of the Watchlisting
19 Advisory Committee, deputies of the National
20 Security Council would likely know, or possibly
21 know I should say.

22 Q You just used the Watchlisting Advisory

1 Committee, and I don't know if that's a separate
2 thing or not. So I'm just asking for clarity. Is
3 that separate or same as the Watchlist Advisory
4 Council?

5 A Sorry, I misspoke. Council. That's
6 right.

7 Q Okay. In order to make a recommendation
8 to the deputy's committee of the National Security
9 Council, do all members of the Watchlisting
10 Advisory Council have to agree to make that
11 recommendation?

12 MS. POWELL: Objection. Calls for
13 deliberative process privileged information.

14 Instruct the witness not to answer. Also
15 outside the scope of the deposition.

16 Q Has the FBI detected some change in how
17 the watchlist inclusion standard is used with the
18 new language versus the old language?

19 MS. POWELL: Objection. Vague.

20 A Not to my knowledge.

21 Q Could we -- I'm sorry. One second.
22 We're going to go to another document. But before

1 we get there, I have a few other questions that
2 don't require a document.

3 Does the FBI use -- I've heard of the
4 phrase "common operating picture" in some of the
5 depositions of your watchlist community
6 colleagues.

7 Is that a term that you're familiar with,
8 "common operating picture"?

9 A I am familiar with that term, yes.

10 Q That's a term that gets used a lot in the
11 context of the watchlisting system. Right?

12 A I don't know if it gets used a lot
13 specifically in that context, but I am familiar
14 with the term.

15 Q Does the term "common operating
16 picture" -- remember that you're testifying on
17 behalf of the FBI. Does the term "common
18 operating picture" come up in the context of the
19 FBI's approach to its watchlist?

20 MS. POWELL: Objection. Vague.

21 A So if you could repeat the question.

22 Q It's not a trick question, Mr. Langham.

1 So I'm just trying to kind of ask a basic question
2 so that we can get more details. Okay? So I'm
3 not trying to -- it's not a trick. Okay?

4 Mr. Langham, in the context of the FBI's
5 management role in the watchlisting system, it
6 uses this term, "common operating picture."

7 Right?

8 MS. POWELL: Objection. Vague.

9 A So we do use the phrase "common operating
10 picture" a lot. But -- and it does get used
11 within the context of watchlisting, yes.

12 Q Great.

13 A I don't know if it gets used -- like, I
14 wouldn't characterize it as frequently or overly
15 frequent.

16 Q I didn't ask for a comparison. The
17 question did not call for a comparison of what
18 discourses the FBI uses that phrase. I just --
19 you know, so let me just, to make sure that I
20 understand your answer, the FBI does use this
21 phrase "common operating picture" in its
22 discussions about its use in a role in the

1 watchlisting system. Correct?

2 MS. POWELL: Objection. Still vague.

3 A Yes, we -- the phrase "common operating
4 picture" does come up in discussions of
5 watchlisting.

6 Q How does the watchlisting system -- I'm
7 sorry. Let me start again.

8 What role does the watchlisting system
9 play in providing -- let me even -- let me
10 withdraw that question.

11 The common operating picture is an
12 important thing at the FBI. Right?

13 MS. POWELL: Objection. Vague.

14 A So having a common operating picture
15 between the FBI and other law enforcement agencies
16 in some contexts is important, yes.

17 Q Are there contexts where it's not
18 important, Mr. Langham?

19 A Yeah, there is. So, for example, the FBI
20 is investigating a sensitive matter that maybe
21 it's not appropriate for example local law
22 enforcement to be aware of, then we wouldn't have

1 a common operating picture between the FBI and
2 local law enforcement in that particular
3 investigation.

4 Q Sometimes things get compartmentalized.
5 Right, Mr. Langham?

6 MS. POWELL: Objection. Vagueness.

7 A Yes.

8 Q Does the watchlist play a role in
9 creating a common operating picture among federal
10 agencies?

11 A Yes, it does.

12 Q Again, Mr. Langham, you're testifying on
13 behalf of the FBI. Does the FBI believe that the
14 watchlisting system plays a role in creating a
15 common operating picture among federal agencies?

16 MS. POWELL: Objection. Asked and
17 answered.

18 A Yes, it does.

19 Q How does the watchlist play a role --
20 what role does the watchlist play in making this
21 common operating picture around federal agencies?

22 MS. POWELL: Objection to the extent it

1 calls for law enforcement privileged information.

2 But the witness can give the general answer.

3 A So it makes it known both between the FBI
4 and other federal agencies the watchlisting status
5 of a given individual, which can be, depending on
6 the circumstances, important to know.

7 Q The watchlist -- I think of the watchlist
8 status as like an outbound kind of piece of
9 information. And encounters -- are you familiar
10 with that term, "encounters"?

11 MS. POWELL: Objection. Vague.

12 A I'm familiar with the term "encounters,"
13 yes.

14 Q I think of encounters as inbound
15 information. Okay?

16 When -- in the context of the watchlist,
17 encounters are instances where somebody is coming
18 across a watchlisted person. Right?

19 MS. POWELL: Objection. Vagueness.

20 A But that's more or less my understanding
21 of it, yes.

22 Q And during those encounters, the FBI

1 views them as opportunities to collect information
2 about the listees encountered. Correct?

3 MS. POWELL: Objection, to the extent it
4 calls for law enforcement privileged information.

5 But I think there is a general answer the
6 witness can give.

7 A Not necessarily. So an encounter can
8 be -- there are encounters where we don't obtain
9 information, or additional information.

10 Q But the general idea of an encounter is
11 to collect information from the person
12 encountered. Correct?

13 MS. POWELL: Objection, vagueness and to
14 the extent it calls for law enforcement privileged
15 information.

16 But I think there are general answers the
17 witness can give.

18 A I don't know that that's the general
19 purpose of an encounter. So an encounter isn't
20 initiated by the agency.

21 Q Isn't an encounter always initiated by
22 some agency? Isn't that the whole idea, that

1 somebody is encountering the --

2 A So --

3 MS. POWELL: Objection to the extent it
4 calls for law enforcement privileged information.

5 But you can answer.

6 A So I view it -- so for example, if law
7 enforcement is present at an airport, if the
8 watchlisted individual never comes to the airport,
9 they aren't encountered unless they're encountered
10 elsewhere. But they aren't encountered in that
11 context. So the subject or the person initiates
12 that encounter.

13 Q Does the FBI expect bodies that encounter
14 people on the watchlist to provide information on
15 the person if they're actually encountered?

16 MS. POWELL: Objection. Vagueness. And
17 to the extent it calls for law enforcement
18 privileged information.

19 But the witness can answer.

20 A I'm sorry. Can you repeat that one more
21 time?

22 Q The prior situation that you explained

1 was a person who buys a ticket and never uses that
2 ticket at the airport. Correct?

3 MS. POWELL: Objection. Mischaracterizes
4 prior testimony.

5 Q Is that right?

6 A Yeah.

7 Q Isn't that --

8 A No, that's not what I -- that's not what
9 I said.

10 Q Tell me what you said, Mr. Langham.

11 A So I said, like, so you had -- you had
12 asked or I had said that encounters aren't
13 necessarily initiated by the government or law
14 enforcement.

15 And then I used an example of a subject
16 going to the airport, is that encountered by law
17 enforcement. But if they don't go to the airport,
18 that encounter is not -- it doesn't occur, so it's
19 initiated actually by the person going to the
20 airport, not by the government.

21 Q Okay. I'm not -- I'm not going to
22 quibble about who is initiating the encounter.

1 A Okay.

2 Q The FBI has -- uses this term "encounter"
3 in the context of government bodies coming into
4 contact with people on the watchlist. Correct?

5 A So the --

6 MS. POWELL: Objection. Vagueness.

7 A Yeah, so the term "encounter" is not an
8 FBI-specific term. So other agencies use the term
9 "encounter" as well.

10 Q I didn't ask about other agencies. And
11 I'm only here asking about the FBI, Mr. Langham.

12 A Okay.

13 Q The FBI uses the term "encounter" to mean
14 that recipients of watchlist information have come
15 across in some way, shape, or form a person on the
16 watchlist. Right?

17 A That is one of the ways we use the term
18 "encounter," yes.

19 Q Does the FBI typically receive
20 information from agencies that receive watchlist
21 information about the encounters that they have
22 with people on the watchlist?

1 MS. POWELL: Objection. Vague and
2 compound.

3 A If they are the subject of an FBI
4 investigation, we typically do.

5 Q Are you saying that if a person is not
6 the subject of an FBI investigation, that the FBI
7 does not receive encounter information from bodies
8 that come across people that they believe are on
9 the watchlist?

10 MS. POWELL: Objection to the extent it
11 calls for law enforcement privileged information.

12 I'm actually going to instruct the
13 witness not to answer. And also add an objection
14 as to form and vagueness.

15 MR. ABBAS: You are objecting just on law
16 enforcement privilege, that's the objection?

17 MS. POWELL: Yeah.

18 Q Does the FBI receive encounter
19 information each time a person -- let me back up.

20 The FBI sometimes encounters people on
21 the watchlist. Right?

22 A Yes.

1 Q Maybe they're making an arrest and they
2 would run that person against the watchlist.

3 Is that right?

4 MS. POWELL: Objection. Vagueness.

5 A That would be one -- arresting an
6 individual on the watchlist would definitely be a
7 way to encounter someone on the watchlist, yes.

8 Q Seeking voluntary interrogation of a
9 person, would that be another way that the FBI
10 might encounter a person on the watchlist?

11 MS. POWELL: Objection. Form and
12 vagueness.

13 A So I guess I'm unclear. Seeking
14 voluntary interrogation?

15 Q You've been at the FBI for a long time,
16 Mr. Langham.

17 Is that right?

18 A Yes.

19 Q Yeah. I think you know what I mean by
20 the FBI seeking a voluntary interrogation, or
21 the --

22 MS. POWELL: Objection. Objection as to

1 form and vagueness. And the FBI doesn't always
2 use the same terminology CAIR does. He's asking
3 you to define what you mean. It might be helpful
4 for the record for you to do so.

5 Q All right. The FBI sometimes on occasion
6 asks people to answer their questions voluntarily.

7 Correct?

8 A That is correct, yes. We interview
9 people quite a bit, not just watchlisted people
10 but all types of people.

11 Q If an FBI agent is asking a person on the
12 watchlist to sit down and answer some questions
13 voluntarily, that would constitute an encounter.

14 Correct?

15 A Yes, that -- I believe that would -- yes,
16 that would be an encounter.

17 Q How would that FBI agent -- what are the
18 FBI agent's obligations in that situation to
19 document the encounter?

20 MS. POWELL: Objection to the extent it
21 calls for law enforcement privileged information.

22 I think the witness can answer if there

1 is a general answer.

2 A The FBI typically documents interviews in
3 a standard -- in an FD-302. But if no information
4 of value is obtained in that interview, it could
5 be documented some other way or not at all.

6 Q I know about the 302s. That's
7 applicable -- that's a required document that an
8 FBI agent must complete whether or not a person is
9 on the watchlist. Correct?

10 MS. POWELL: Objection. Mischaracterizes
11 prior testimony.

12 A The documentation of an FBI interview is
13 typically done in an FD-302 regardless of whether
14 or not a person is on the watchlist.

15 Q Got it. Great.

16 Is there any watchlist-specific
17 documentation that an FBI agent would have to
18 complete if the FBI agent were interviewing
19 somebody voluntarily?

20 A Any -- I'm sorry, can you repeat that?

21 Q Yeah. And I'll just kind of go over
22 where we are, so you can see exactly what I'm

1 asking about.

2 A Thank you.

3 Q For every interview that an FBI agent
4 does with a person in the public, the FBI agent
5 has to complete an FD-302. Correct?

6 A Every substantive interview, yes.

7 Q Where do those FD-302s live, in Sentinel,
8 in TIDE? Where do they go?

9 A They exist in Sentinel, yes.

10 Q And FBI agents know that if they do a
11 voluntary interview, that they have to complete an
12 FD-302 and put it in Sentinel. Right?

13 MS. POWELL: Objection. Mischaracterizes
14 prior testimony.

15 A If an agent does a substantive interview,
16 it's to be documented in FD-302. And every agent
17 should know that, yes.

18 Q Now I'm going to ask about non-FD-302
19 documents that accompany those same interviews.

20 First let's just ask if they exist. If
21 an FBI agent is interviewing voluntarily somebody
22 who is on the watchlist, is there any other

1 document, besides an FD-302, that they have to
2 complete?

3 MS. POWELL: Objection, to the extent it
4 calls for law enforcement privileged information.

5 But I think the witness can answer yes,
6 no, or I don't know.

7 A To my knowledge, there's no specific
8 documentation done when a watchlisted individual
9 is interviewed. If you interview a watchlisted
10 person, you would document that in an FD-302,
11 which, as you pointed out, would go to Sentinel.

12 Q Are you sure about that?

13 A So if it's a nonsubstantive interview of
14 someone on the watchlist, it could be not
15 documented at all or it could be documented some
16 other way. But a substantive interview of someone
17 on the watchlist or not on the watchlist should be
18 documented in the 302.

19 Q You made this distinction between
20 substantive and nonsubstantive interview. Is that
21 like a policy distinction that you're making? I
22 don't know what that -- I've never come across

1 that terminology.

2 MS. POWELL: Objection. Vague.

3 A So I'm trying to -- so people feel
4 differently about an encounter. So someone could
5 be asked a question or two, and they would be
6 considered -- they would consider themselves
7 having been interviewed. But if it wasn't
8 substantive, then it might not be documented in a
9 302.

10 Q So by "nonsubstantive," you mean like a
11 passing interaction that an FBI agent may have
12 with a member of the public.

13 Is that what you mean?

14 A Yeah, that's -- yes.

15 Q Is that a distinction that's written down
16 somewhere, or is that just like an analytical
17 framework that you have?

18 A No; it's a practical consideration. We
19 don't document every single person we talk to all
20 the time.

21 Q My understanding of encounters with
22 people on the watchlist is that there are specific

1 expectations that the FBI has of agents that
2 encounter people on the watchlist.

3 Are there any steps that an FBI agent if,
4 for example, was interviewing a person on the
5 watchlist, are there any steps short of making
6 documents that the FBI expects its agents to take?

7 MS. POWELL: Objection, to the extent it
8 calls for law enforcement privileged information.

9 The witness can answer at a level of
10 generality, I think.

11 A Yeah, so I don't know what you mean by
12 steps taken, like. What would be an example of a
13 step taken?

14 Q Yeah, my understanding is that when an
15 FBI agent encounters a person on the watchlist
16 they are to call the Terrorism Screening Center to
17 determine whether or not the person is actually on
18 the watchlist.

19 Is that right?

20 A So if an agent is interviewing someone on
21 the watchlist, they almost certainly already know
22 that they're on the watchlist.

1 Q That's great, just not an answer to my
2 question.

3 The question was, would an FBI agent
4 interviewing voluntarily a person who is on the
5 watchlist have to call the Terrorism Screening
6 Center to report the encounter or to otherwise
7 tell them about it?

8 MS. POWELL: Objection, to the extent it
9 calls for law enforcement privileged information.
10 And objection as to vagueness and form.

11 The witness can answer, if he knows.

12 A So I'm not aware of a requirement to
13 contact the TSC when a watchlisted person is
14 encountered. That very well could be good
15 practice to do that, but I'm not aware of the
16 requirement to do that.

17 Q And I'm asking a related question, but
18 it's a little bit different.

19 Do you know whether or not the FBI has a
20 policy about how FBI agents are to report
21 watchlisted encounters to the Terrorism Screening
22 Center?

1 MS. POWELL: Objection as to form and
2 vagueness.

3 A So I don't know that it's an absolute
4 requirement to notify the Terrorism Screening
5 Center when a watchlisted person is encountered.
6 And so I don't know the means by which that's
7 recommended to do that.

8 Q You're not aware of any
9 information-sharing agreements that the FBI has
10 entered into with other agencies requiring it to
11 share information it gets from people on the
12 watchlist with other agencies?

13 MS. POWELL: Objection as to form and
14 vagueness, and to the extent it calls for law
15 enforcement privileged information.

16 A I am aware of information-sharing
17 agreements between various agencies with regard to
18 watchlisting, encountering watchlisting
19 individuals, yes -- watchlisted individuals,
20 sorry.

21 Q So there are -- there are policies that
22 the FBI has about sharing information with other

1 agencies about people on the watchlist?

2 MS. POWELL: Objection as to form and
3 vagueness and mischaracterizes prior testimony.

4 A I'm sorry, could you repeat the question?

5 MR. ABBAS: Can we read back the
6 question. Is that possible?

7 (Pending question read.)

8 MS. POWELL: Same objections.

9 A So I know that there are
10 information-sharing agreements between the FBI and
11 other agencies about watchlisting information.

12 Q And watchlisting information would
13 include the information gathered in an encounter
14 with a person on the watchlist. Right?

15 MS. POWELL: Objection. Mischaracterizes
16 prior testimony.

17 A Sorry, can you repeat the question?

18 MR. ABBAS: Could we read back the
19 question.

20 (Pending question read.)

21 MS. POWELL: Same objections.

22 A And I'm sorry, I couldn't hear the first

1 part of that.

2 (Pending question read.)

3 MS. POWELL: Same objections.

4 A No, so watchlist, I would not
5 characterize watchlisting information as
6 information gained in an interview by someone on
7 the watchlist.

8 Q Are you sure about that?

9 MS. POWELL: Objection. Asked and
10 answered.

11 A Yes. I would not consider information
12 obtained in the interview of a watchlisted
13 individual as watchlisting information.

14 Q I'm just going to, because you're here,
15 Mr. Langham, testifying on behalf of the FBI,
16 that's a little awkward of a situation. I'm just
17 going to make sure that what you just said is the
18 FBI's view, and not Mr. Langham's view.

19 The FBI -- your testimony today is that
20 the FBI doesn't consider information gathered from
21 a person on the watchlist during a voluntary
22 interview FBI has with that person as watchlist

1 information?

2 MS. POWELL: Objection. Asked and
3 answered.

4 A No, I would not consider that information
5 watchlist information. So that information is,
6 you know -- maybe of some other value, but it's
7 not watchlist information.

8 Q Is it terrorism information?

9 MS. POWELL: Objection, to the extent you
10 are calling for a legal conclusion.

11 A It could be.

12 Q Are you familiar with the term "encounter
13 package"?

14 A I am not.

15 MR. ABBAS: Objection. The witness
16 should definitely be familiar with the term
17 "encounter package." And it's I think a
18 reflection of the issues that we've been having
19 regarding the discussion about encounters so far.

20 MS. POWELL: Disagree, which you would
21 not be surprised to learn.

22 Is there some FBI document where you've

1 come across the term "encounter practice"?

2 MR. ABBAS: Yeah. Yeah. There are.
3 There are. Well, we'll talk about it later.

4 Q So I want to -- we kind of got off on a
5 tangent, Mr. Langham. I apologize for that.

6 To get back to our topic, how does the
7 watchlist help provide agencies with a common
8 operating picture?

9 A So the way that it creates a common
10 operating picture is that if a law enforcement
11 agency encounters an individual on the watchlist,
12 that information is then shared with agencies to
13 include the FBI. So that now the FBI knows that
14 this individual was encountered, the law
15 enforcement agency knows that this watchlisted
16 individual is encountered, so they have a more
17 common operating picture. That's how I would
18 describe that.

19 Q And the information would be in Sentinel?
20 Or where would that information be?

21 MS. POWELL: Objection as to form and
22 vagueness. Sorry. What information are you

1 talking about?

2 MR. ABBAS: I think he understands, I
3 think.

4 Q Mr. Langham, just the information that
5 you just referred to.

6 MS. POWELL: Same objections.

7 A So not in -- I'm not envisioning
8 Sentinel. So if an encountered individual, a
9 watchlisted individual is encountered by law
10 enforcement, they wouldn't -- they likely wouldn't
11 become aware of that through Sentinel.

12 Q The FBI would become aware of it through
13 Sentinel, wouldn't they?

14 MS. POWELL: Objection as to form and
15 vagueness.

16 A I think there are a variety of ways that
17 we could become aware of it. Sentinel wouldn't be
18 the most effective way or efficient way to notify
19 someone that a watchlisted individual was
20 encountered.

21 Q Who is doing the notifying that a
22 watchlisted individual is encountered?

1 MS. POWELL: Objection as to form and
2 vagueness.

3 A So in that scenario, let's say local law
4 enforcement encounters a watchlisted individual.

5 They would notify the TSC.

6 Q Is that the process when other government
7 agencies encounter a person on the watchlist?

8 MS. POWELL: Objection as to the scope of
9 the deposition and as to form and vagueness.

10 A So it is recommended when law enforcement
11 encounters a watchlisted individual to notify the
12 TSC.

13 Q And that's to help create this common
14 operating picture. Right?

15 A Yes, among other things.

16 Q What are the other things?

17 A So it also provides potential
18 investigative leads for the FBI agent assigned to
19 that investigation and makes them aware of things
20 that they otherwise would not be aware of.

21 Q That sounds like a common operating
22 picture rationale.

1 Is that different than what you mean when
2 you say that there's a common operating picture?

3 A So, yeah, it makes -- so now both
4 entities will be aware that this watchlisted
5 individual was encountered, and where and when
6 they were encountered.

7 Q So I want to talk about the "where" piece
8 now.

9 MR. ABBAS: Can we go to the mapping
10 document. And let's mark it as Exhibit 4.

11 MS. POWELL: I'd like to take a break at
12 some point soon just for personal needs.

13 MR. ABBAS: Yeah, we can take a break
14 now, that's fine.

15 MS. POWELL: Ten minutes?

16 MR. ABBAS: Ten minutes. That's fine.
17 Absolutely. See everybody in ten minutes.

18 (A recess was taken.)

19 MR. ABBAS: Exhibit 4 is up now. If you
20 could project it.

21 (FBI Exhibit 4 marked for identification
22 and is attached to the transcript.)

1

2

MR. ABBAS: We're marking as Exhibit 4,
it begins on FBI 0000861 and it goes sequentially
to FBI 864.

3

4

BY MR. ABBAS:

5

6

Q Mr. Langham, are you familiar with
something called the Domestic Investigations and
Operations Guide?

7

8

A I am, yes.

9

10

Q The FBI calls it the DIOG.

11

Is that right?

12

A We do, yes.

13

Q What is the DIOG?

14

A So it's policies and procedures that are
supposed to be followed when conducting FBI
investigations.

15

16

Q The DIOGs outline what the FBI can and
can't do. Right?

17

A Among other things, yes.

18

MR. ABBAS: I want to go to the second
page of this document. And it's the 4.3.3.2. If
you go to the bottom of that page. Right there.

19

20

21

22

1 Perfect. Okay.

2 Q I want you to read this paragraph, and
3 then I'm going to ask you some questions about it.

4 MS. POWELL: Does the section go over
5 onto the next page? I can't tell.

6 MR. ABBAS: We're going to take them one
7 at a time. So we're just going to do 4.3.3.2.1.

8 MS. POWELL: Okay.

9 Q Let me know when you're done,
10 Mr. Langham.

11 A Okay.

12 Q Does the FBI -- is it accurate that the
13 FBI --

14 A One second.

15 MS. POWELL: I think he's still reading.

16 MR. ABBAS: Okay.

17 A Okay, I'm finished.

18 Q Is this right, that the FBI has a policy
19 that allows the FBI to identify locations of
20 concentrated ethnic communities?

21 Is that right?

22 MS. POWELL: Objection. Mischaracterizes

1 the document.

2 A Yes.

3 Q Has the FBI identified locations of
4 concentrated ethnic communities in the past?

5 MS. POWELL: Objection as to scope of the
6 deposition notice.

7 A What do you mean, "in the past"?

8 Q Before today. Before today.

9 A Yes.

10 Q It has, the FBI has identified locations
11 of concentrated ethnic communities. Correct?

12 A Correct.

13 Q Does the FBI have maps that detail where
14 Muslims congregate, where Muslims shop, where
15 Muslims live?

16 MS. POWELL: Objection as to the scope of
17 the deposition notice and to the extent it calls
18 for law enforcement privileged information.

19 But you can answer, to the extent you
20 know, I think.

21 A I'm not aware of specific maps for
22 concentrations of Muslims. But other groups we

1 have maps of, yes.

2 Q Do you have maps of Arab communities in
3 the United States?

4 MS. POWELL: Objection as to the scope of
5 the deposition notice and to the extent it calls
6 for law enforcement privileged information.

7 And I think you can answer at an
8 appropriate level of generality.

9 A So I'm not aware of that specific map. I
10 haven't come across it. But it may exist. I'm
11 not sure.

12 Q You don't know whether or not the FBI has
13 maps of Arab communities in the United States?

14 MS. POWELL: Objection. Asked and
15 answered. And as to the scope of the deposition
16 notice.

17 A So I'm aware of various maps of ethnic
18 communities, not that specific map.

19 Q Just so I understand, you're aware that
20 the FBI has maintains maps of ethnic communities.

21 Correct?

22 MS. POWELL: Objection, to the extent it

1 mischaracterizes prior testimony.

2 A So we note locations of ethnic
3 communities, yes.

4 Q Now I'm asking about the multiple maps of
5 multiple ethnic communities?

6 Is that right?

7 MS. POWELL: Same objection as to the
8 scope, and to the extent it calls for law
9 enforcement generality.

10 I think the witness can answer at levels
11 of generality consistent with FBI policies.

12 A We have maps of ethnic communities, yes.

13 Q How many happens of ethnic communities
14 does the FBI have?

15 MS. POWELL: I'm going to assert the law
16 enforcement privilege.

17 Do you know the answer to that question?

18 THE WITNESS: I don't.

19 MS. POWELL: Okay. You can say that.

20 I would assert the law enforcement
21 privilege over a specific answer.

22 Q Okay. I just want to understand, I'm

1 very interested in these maps.

2 You don't know how many ethnic maps the
3 FBI has made?

4 MS. POWELL: Objection as to scope and
5 law enforcement privilege.

6 You can clarify your answer.

7 A No, I don't. And so you can read here
8 what they're talking about is domain awareness.
9 So it may be the case that one field office has a
10 specific map. And it would be unlikely that
11 people in another field office would know that, be
12 aware of that, or have cause to even know that
13 that exists.

14 Q All right. Let's go to the top of the
15 next page. And you see it's going to be Paragraph
16 4.3.3.2.2. I want you to read that paragraph, and
17 then I'm going to ask you some questions about
18 that paragraph.

19 A Finished.

20 Q You see the second sentence where it
21 says, "Sophisticated computer geomapping
22 technology"?

1 Do you see that?

2 A I do.

3 Q Does the FBI have a name for the
4 sophisticated computer geomapping technology it's
5 referring to here?

6 MS. POWELL: Objection as outside the
7 scope of the deposition notice, and to the extent
8 it calls for law enforcement privileged
9 information.

10 Does the witness know the answer?

11 A In my experience, we've used different
12 programs to do this. I don't know if we've
13 transitioned to -- recently to a specific
14 technology.

15 Q I want to know everything that you know
16 about this technology. So you used different
17 programs in the past. What programs have you used
18 to map ethnic communities?

19 MS. POWELL: Objection as outside the
20 scope of the deposition notice, and to the extent
21 it calls for law enforcement privileged
22 information.

1 Is there -- do you know if there is
2 nonprivileged information you can share?

3 A I don't know the names of the specific --
4 or recall the names of the specific technologies
5 that we used over time.

6 Q But you do know that the FBI has used
7 different geomapping technology to create ethnic
8 maps of communities inside the United States.

9 Correct?

10 MS. POWELL: Objection as outside the
11 scope of the deposition notice and asked and
12 answered.

13 A Yeah, my understanding is over time
14 different mapping technologies have been used.

15 Q Where in the FBI do these ethnic
16 community geomaps live?

17 MS. POWELL: Objection as outside the
18 scope of the deposition notice. Way outside the
19 scope of the deposition notice.

20 So I'm not sure if there is any
21 privileged part of the answer. Do you know?

22 THE WITNESS: I don't know.

1 MS. POWELL: Okay.

2 Q Are you aware of any FBI field office
3 identifying a Muslim community as a community that
4 should be mapped?

5 MS. POWELL: Objection as outside the
6 scope of the deposition notice and as to form and
7 vagueness.

8 And to the extent it calls for law
9 enforcement privileged information about specific
10 maps or investigations, we would assert the law
11 enforcement privilege.

12 A So in my experience at the field offices
13 I've been at, a general map of Muslim -- the
14 Muslim community would not be useful. But I'm
15 aware of maps of subsets of individuals.

16 Q You're aware of maps of subsets of
17 individuals. What do you mean by that?

18 A So --

19 MS. POWELL: Objection to the extent it
20 calls for law enforcement privileged information
21 and as to form and vagueness.

22 Do you think there is a nonprivileged

1 answer you could give?

2 A I think -- yeah, so I -- what I'm trying
3 to say is, a map broadly of Muslims for -- in the
4 context of most field offices would not be useful.

5 Q I'm not -- we are going to talk for
6 hours, Mr. Langham, about the usefulness of these
7 things, I promise.

8 A Okay.

9 Q Right now I just want to know whether
10 they exist or don't exist and what exists and what
11 doesn't exist. Okay?

12 A I guess I'm trying to say I am not aware
13 of a broad map of Muslims in any -- for any given
14 field office.

15 Q Are you aware of a specific map of
16 Muslims that field offices have maintained in the
17 past?

18 MS. POWELL: Objection as to form and
19 vagueness.

20 I'm instructing the witness not to answer
21 about sort of specific maps and investigations. I
22 don't know if there is a more general answer he

1 can give.

2 A Yeah, so the religious aspect is not
3 necessarily the part of interest. So when you --
4 you're trying to make connections. And so it
5 would, for example, be more based on likely an
6 ethnic group than -- than a religious group.
7 Because Muslims can be of all ethnicities, as you
8 know.

9 And so, for example, a group of --

10 MS. POWELL: I'm instructing the witness
11 not to answer as to specific maps. But if there
12 is a more general answer, you can give it.

13 Q Mr. Langham, it didn't sound like you
14 were done with your answer.

15 A I guess what I'm trying to say is, in my
16 experience a map of Muslims in any given field
17 office's area of responsibilities would not be
18 useful, and I don't know of one that exists.

19 Q You used the term like a general map of
20 Muslims. And that's why I said -- that's why my
21 next question said is there a specific map.

22 When you talk about a subset of

1 individuals, have you -- let me, you know -- so we
2 have those things in the background. But let me
3 kind of move to a different place.

4 Have you, yourself, seen any of these
5 ethnic maps that the FBI has built about ethnic
6 communities in the United States?

7 MS. POWELL: Objection as outside the
8 scope of the deposition notice.

9 A Yes.

10 Q You have seen these ethnic maps that the
11 FBI has built about ethnic communities in the
12 United States. Correct?

13 A I have seen maps of ethnic communities,
14 yes.

15 Q Do you recall any of those ethnic maps of
16 communities inside the United States being a map
17 of Arab communities?

18 MS. POWELL: Objection, to the extent it
19 calls for information protected by the law
20 enforcement privilege.

21 I think I'm just going to instruct the
22 witness not to describe any specific maps.

1 MR. ABBAS: I think that it's going to be
2 a bridge too far, Amy, to assert a law enforcement
3 privilege over basic information about these
4 ethnic maps.

5 MS. POWELL: It is so far outside the
6 field of what is in the deposition notice at this
7 point, I fully admit I am possibly speculating a
8 little as to the bounds of privilege.

9 If you want us to take a break and
10 discuss it, we can. But we are well outside of
11 the scope of the deposition notice, so I am
12 inclined to be forward leaning on the privilege
13 here, which sounds like it applies.

14 MR. ABBAS: We're not. And he is the --
15 the designee is the one that raised the issue of
16 location of encounters, and that was our segue
17 into this conversation.

18 Q Mr. Langham, does the FBI have maps about
19 where people on the watchlist have been
20 encountered?

21 A Not to my knowledge, no.

22 Q Does the FBI maintain records about where

1 people have been encountered?

2 MS. POWELL: Objection as to form and
3 vagueness.

4 A I don't believe so.

5 Q Are you sure about that? Are you sure
6 that the FBI doesn't have any maps of where, for
7 example, watchlisted people are encountered inside
8 the United States?

9 MS. POWELL: Objection as to form and
10 vagueness, to the extent it calls for law
11 enforcement privileged information. But --

12 A So I'm pretty sure that that doesn't
13 exist. And I don't think that that would be
14 useful because -- so if a specific watchlisted
15 person is encountered at a specific location, that
16 information may be of interest to an investigating
17 agent.

18 But in general where all watchlisted
19 people are encountered throughout the United
20 States, I don't see -- I just simply don't see how
21 that would be useful.

22 Does that make sense?

1 Q I understand what you're saying. I'm
2 going to disagree with it, but I'm going to -- I
3 understand what you're saying. Hold on one
4 second. I apologize.

5 Does the FBI track where people on the
6 watchlist live?

7 MS. POWELL: Objection as to form and
8 vagueness.

9 You can answer.

10 A So that is something that is known of
11 some watchlisted individuals. I don't believe --
12 and I know address is not known for all
13 watchlisted individuals.

14 MR. ABBAS: Let's -- we're going to go
15 back and forth between -- there's another exhibit
16 in there. If we could project that.

17 (FBI Exhibit 5 marked for identification
18 and is attached to the transcript.)

19 Q Do you see the Exhibit 5? I just want to
20 make sure --

21 A Not yet.

22 Q Oh, okay.

1 A Not yet.

2 Q It's coming.

3 MR. ABBAS: We're going to mark this as
4 Exhibit 5. Exhibit 5 is TIDE By The Numbers.

5 MS. POWELL: I'm sorry, is this marked
6 Secret Noform at the top?

7 MR. ABBAS: Yes.

8 MS. POWELL: I'm going to instruct the
9 witness not to answer any questions about that
10 document on grounds of law enforcement privilege
11 and state secrets privilege.

12 MR. ABBAS: That's fine. Well, he is
13 going to answer some questions looking at the
14 document at least, and there's going to be other
15 documents like this.

16 MS. POWELL: I am going to repeatedly
17 instruct the witness not to answer, then, just so
18 you're aware.

19 MR. ABBAS: Yeah, that's fine.

20 Q All right. So we are marking this one
21 page, TIDE By The Numbers, as Exhibit 5.

22 I want you, Mr. Langham, to just take a

1 look. I'm not asking you a question. I am just
2 directing your attention to, you see the top five
3 locations of KSTs in the U.S.?

4 Do you see that map of the U.S.?

5 A I do, yeah.

6 Q I am just going to ask you some questions
7 about TIDE. TIDE is an FBI database.

8 Is that right?

9 MS. POWELL: Objection.

10 You can answer that.

11 A I believe it's intelligence community
12 database. I don't think of it as specifically an
13 FBI database. But I acknowledge I don't know for
14 certain.

15 Q You don't know who runs TIDE, who is in
16 charge of TIDE?

17 A I know that TIDE exists. I know that I'm
18 familiar with it. I've used it. I don't know who
19 runs that specific database.

20 Q With regards to U.S. persons on the
21 watchlist, of course the FBI knows where U.S.
22 persons are living who are on the watchlist.

1 Right?

2 MS. POWELL: Objection as to form, and
3 assumes facts not in evidence.

4 A Typically we know where U.S. watchlisted
5 persons live, typically.

6 Q Does the FBI assess in any way where U.S.
7 persons on the watchlist live?

8 MS. POWELL: Objection as to form and to
9 the extent it calls for law enforcement privileged
10 information.

11 Without referring to this document at
12 all, you can answer if you know.

13 A As part of an investigation, it's very
14 useful to know where a subject lives.

15 Q That's why for U.S. persons the FBI makes
16 it its business to gather information or insist
17 that that information be gathered. Right?

18 MS. POWELL: Objection as to form.

19 Can you answer that question?

20 A Sorry. Can you repeat the question?

21 Q My understanding is that for a person to
22 be placed on the watchlist, you don't need their

1 home address. Right?

2 MS. POWELL: Objection as to form and to
3 the extent it calls for law enforcement privileged
4 information.

5 I think you can answer, if you know.

6 A You don't necessarily need an address.
7 You need --

8 Q But like you said, knowing where a person
9 on the watchlist lives is important information.

10 Right?

11 A So I guess what I would say is that
12 knowing where anyone that the FBI is investigating
13 lives is important regardless of the type of
14 investigation, regardless of whether or not
15 they're watchlisted. But if you're investigating
16 someone, knowing where they live is important.

17 Q But you don't have to be under
18 investigation to be on the watchlist. Right?

19 A That's right.

20 Q So there's people on the watchlist that
21 are not under investigation. Correct?

22 MS. POWELL: Objection to the extent a

1 comprehensive answer would call for law
2 enforcement privileged information.

3 But you can answer.

4 A Yes.

5 Q And in fact, there are people that are
6 under investigation that you don't put on the
7 watchlist. Right?

8 MS. POWELL: Objection to the extent it
9 calls for law enforcement privileged information.
10 But I think you can --

11 A Yes.

12 MS. POWELL: -- answer.

13 Q There are people that are under
14 investigation that you don't put on the watchlist.
15 Right?

16 A I guess when you say "under
17 investigation," what do you mean by that? So you
18 could be under the investigation by the FBI for,
19 you know, bank fraud. Like, so, obviously, those
20 people are not necessarily -- are not watchlisted.

21 Q Mr. Langham, I am asking a very specific
22 question. Okay? That's why I'm insisting on a

1 specific answer.

2 There are people under investigation who
3 are not placed on the watchlist. Right?

4 MS. POWELL: Objection. Asked and
5 answered.

6 A That is correct, if they don't meet the
7 reasonable suspicion standard, they would not be
8 placed on the watchlist.

9 Q But there are also people who do meet the
10 reasonable suspicion standard that the FBI decides
11 not to put on the watchlist. Correct?

12 MS. POWELL: Objection. Assumes facts
13 not in evidence.

14 A I'm not aware of that.

15 Q Don't you have a term for
16 noninvestigative subjects? Isn't that a term?
17 Are you familiar with that term, "noninvestigative
18 subjects"?

19 MS. POWELL: Objection to the extent it
20 calls for law enforcement privileged information.

21 But I think you can answer. Let me know
22 if you think you cannot.

1 A I'm familiar with that term.

2 Q Isn't it true that the FBI doesn't put
3 some people on the watchlist out of a concern that
4 placing them on the watchlist will disclose the
5 FBI's investigative interest in that person?

6 MS. POWELL: Objection, to the extent it
7 calls for law enforcement privileged information.

8 I'm going to instruct the witness not to
9 answer on the grounds of the law enforcement
10 privilege.

11 Q Isn't that a concern that the FBI has to
12 manage, that the placement of a person on the
13 watchlist will disclose the FBI's investigative
14 interest in that person?

15 MS. POWELL: Objection. Assumes facts
16 not in evidence.

17 And to the extent it calls for law
18 enforcement privileged information, I don't know
19 if there is a high-level answer you can give.

20 A That is something that needs to be
21 managed.

22 Q It's a concern that the operation of the

1 watchlisting system itself will disclose to the
2 listee the FBI's investigative interest. Correct?

3 MS. POWELL: Objection, to the extent a
4 comprehensive answer would call for law
5 enforcement privileged information. And asked and
6 answered.

7 A I apologize, can you repeat that?

8 MR. ABBAS: Yeah, could we read back that
9 question.

10 (Pending question read.)

11 A Yeah, under certain circumstances that is
12 a concern.

13 Q Does the FBI in some circumstances decide
14 to not watchlist somebody because the concern that
15 watchlisting them will disclose the FBI's
16 investigative interest is too great?

17 MS. POWELL: Objection. And the answer
18 would call for law enforcement privileged
19 information.

20 I instruct the witness not to answer.

21 It might be useful for us to take a break
22 soon. I don't know that we're going to be able to

1 give you more information on these topics, Gadeir.
2 But I would like to consult with the witness and
3 make sure at this some point. I don't know if you
4 want to exhaust your efforts here first.

5 MR. ABBAS: Yeah, I have a few more. Let
6 me try. And this itself is a little bit of a
7 tangent.

8 Q So I want to understand where a -- if a
9 U.S. person is placed on the watchlist, that
10 person's home address generally becomes known to
11 the FBI. Correct?

12 MS. POWELL: Objection. Mischaracterizes
13 prior testimony.

14 A So through investigation the FBI
15 typically becomes aware of the address of a
16 watchlisted individual if they are the subject of
17 an FBI investigation.

18 Q Does the FBI map where U.S. persons on
19 the watchlist live?

20 MS. POWELL: Objection. Asked and
21 answered. And to the extent it calls for law
22 enforcement privileged information.

1 But you can answer.

2 A Again, to my knowledge, that -- that map
3 would not be useful, at least to investigators.

4 Like this is a good example. So --

5 MS. POWELL: We're not answering any
6 questions about that document.

7 Q Does the FBI map communities that have a
8 lot of people on the watchlist living in them?

9 MS. POWELL: Objection to the extent it
10 calls for law enforcement privileged information.

11 I instruct the witness not to answer.

12 MR. ABBAS: I'm not asking the witness to
13 answer the question.

14 But, ma'am, do you think you could read
15 back the question just for my -- for my sake.

16 (Pending question read.)

17 MS. POWELL: Yeah, I am going to add an
18 objection as to form and vagueness, but still
19 instruct the witness not to answer, I think.

20 Q Do you know who at the FBI is responsible
21 for making these ethnic community maps?

22 A No. So in the --

1 MS. POWELL: We're not answering any
2 questions about this document, so stop looking at
3 it.

4 A Pointing to the -- pointing to the iPad
5 here.

6 So in my experience in field offices,
7 intelligence analysts and intelligence cadre work
8 together to put together those maps.

9 Q And that's done at the field office
10 level, these ethnic maps?

11 A It could be done at either the field
12 office or headquarters level.

13 Q Has an FBI field office made an ethnic
14 map?

15 A Yes.

16 Q And has the FBI headquarters made an
17 ethnic map?

18 A They almost certainly have; I'm just not
19 familiar with those specific maps.

20 Q So you believe that the FBI headquarters
21 has made ethnic -- at least one ethnic map, but
22 you don't know for sure whether or not they have.

1 Correct?

2 A Yeah, I'm most familiar with those type
3 of maps in the context of domain awareness. And I
4 think of domain awareness as a primarily field
5 office function. But it would make sense that FBI
6 headquarters would synthesize that information to
7 look for, you know, trends, et cetera.

8 Q Who has -- who, if anybody, has to
9 authorize the creation of an ethnic map at the
10 FBI?

11 MS. POWELL: Objection as outside the
12 scope of the deposition topic. Sort of a standing
13 objection on most of these map objections as well,
14 outside the topic.

15 A So I don't know who specifically
16 authorizes or approves maps.

17 Q Can it be authorized and approved at the
18 field office level?

19 MS. POWELL: Same objection.

20 A Yes.

21 Q Does the FBI headquarters keep track of
22 how many ethnic maps its field offices have made?

1 MS. POWELL: Objection as outside the
2 scope of the deposition notice.

3 A I don't know.

4 Q Okay. Let's go back to Exhibit 4 and
5 Page 2 of Exhibit 4 -- I'm sorry, Page 3 of
6 Exhibit 4.

7 Do you see that --

8 MS. POWELL: Would this be a good time to
9 take that break, Gadeir?

10 MR. ABBAS: Yes. I'm sorry about that.
11 Do you want to take ten minutes?

12 MS. POWELL: Ten minutes.

13 (A recess was taken.)

14 MR. ABBAS: If we could go back to
15 Exhibit 4. Perfect.

16 Could you zoom in on 4.3.3.2.3, the
17 General Ethnic Racial Behavior.

18 BY MR. ABBAS:

19 Q Read that paragraph, and then I'm going
20 to ask you a few questions about it.

21 A I'm finished.

22 Q You see that for sentence that talks

1 about the authority to collect ethnic community
2 location information?

3 Do you see that one?

4 A I do see it, yeah.

5 Q It sounds to me, based on my reading of
6 this paragraph, that the FBI has placed some kind
7 of limit on its authority to collect ethnic
8 community location information.

9 Is that true?

10 MS. POWELL: Objection as outside the
11 scope of the deposition notice.

12 A Yes, there are limits.

13 Q Has the FBI ever determined that an
14 ethnic map that an FBI agent created exceeded the
15 limits the FBI placed on creating ethnic community
16 maps?

17 MS. POWELL: Objection as outside the
18 scope of the deposition notice and as to form and
19 vagueness.

20 A I'm not aware of an instance like that,
21 no.

22 Q Are you aware of an instance of the FBI

1 headquarters identifying an ethnic map that it
2 made that exceeded the authority the FBI believes
3 it has to make ethnic maps?

4 MS. POWELL: Objection as outside the
5 scope of the deposition notice and as a form and
6 vagueness and asked and answered.

7 A I apologize, could you repeat that or
8 have it read back, please?

9 Q Well, okay, I'll -- so just I'm dividing
10 the question up into two pieces.

11 A Okay.

12 Q So it's my understanding that the field
13 offices can create ethnic maps. Correct?

14 A Yes.

15 Q And the FBI headquarters, they can also
16 create ethnic maps. Right?

17 A I believe, yes.

18 Q Now I'm asking about the authority that
19 those two groups have, ethnic maps.

20 Does the FBI headquarters have the same
21 authority as the FBI field offices to create
22 ethnic maps?

1 MS. POWELL: Objection as outside the
2 scope of the deposition notice.

3 A I don't know the answer to that. I don't
4 know the levels of authority. But I would think
5 that they could both make ethnic maps.

6 Q The limitations -- there are limitations
7 on FBI agents' ability to create ethnic maps.

8 Right?

9 MS. POWELL: Objection as outside the
10 scope of the deposition notice.

11 A But, yeah, so the last sentence of this
12 paragraph I think addresses that in a sense. So
13 it says like broad-brush collection of racial or
14 ethnic characteristics is not helpful to achieve
15 any authorized purpose.

16 And so that's actually what I was trying
17 to get at before when you were asking about the
18 Arab map. So that broad-brush Arab map that you
19 had raised is not useful.

20 And so this kind of -- I didn't know that
21 this sentence exists, but it kind of summarizes
22 what I was trying to say earlier.

1 Does in a make sense?

2 A And I agree with you, Mr. Langham. I
3 also think that Arab and other ethnic maps are not
4 going to be useful. I think where we might have a
5 difference of opinion is in what is a broad-brush
6 collection and what isn't.

7 So I want to ask about the limitations.

8 Okay?

9 As far as you know, a field office has
10 the same limitations on its authority to collect
11 ethnic map information as the FBI headquarters.

12 Correct?

13 MS. POWELL: Objection as outside the
14 scope of the deposition notice.

15 A But, yes, in general, the limitations are
16 laid out here, and they would be -- they would be
17 both for -- those limitations would be both for
18 field offices and for headquarters. There may be
19 exceptions, but I'm not aware of any.

20 Q Has the FBI ever determined that an
21 ethnic map a field office created exceeded the
22 FBI's authority to create ethnic maps?

1 MS. POWELL: Objection as outside the
2 scope of the deposition notice. Form. And
3 vagueness. And asked and answered.

4 Q I'm sorry, let me make it simpler. That
5 was a little bit of a mouthful.

6 Has the FBI ever determined that a field
7 office's ethnic map was made against policy?

8 MS. POWELL: Same objections as to scope,
9 form, vagueness, and asked and answered.

10 A Yeah, I don't know the answer to that.

11 Q Today you can't identify even one ethnic
12 map that a field office created that exceeded FBI
13 policy?

14 MS. POWELL: Same objections. Way
15 outside the scope of the deposition notice. Form.
16 Vagueness. And asked and answered.

17 A No. And -- no, I'm not.

18 Q Now, I asked about the field office maps,
19 ethnic maps. I'm going to ask about the FBI
20 headquarters ethnic maps.

21 Has the FBI ever determined that an
22 ethnic map made by FBI headquarters was made

1 against FBI policy?

2 MS. POWELL: Same objections as outside
3 the scope of the deposition notice, form,
4 vagueness, and asked and answered.

5 A I don't know an example of that.

6 Q Has the FBI ever reviewed the lawfulness
7 of the ethnic maps that it's made?

8 MS. POWELL: Same objections. Outside
9 the scope of the deposition notice, form,
10 vagueness.

11 A I believe we would -- we review from time
12 to time all of our practices. So I would think
13 that that at some point would have been reviewed.
14 But I'm not familiar with a specific review of
15 ethnic maps.

16 Q And so I need to unpack your general
17 answer --

18 A Sure.

19 Q -- you know, from -- to see what's there.
20 You said that it was your expectation
21 that the FBI would review the ethnic maps that its
22 field offices and headquarters created.

1 Is that correct?

2 MS. POWELL: Objection as outside the
3 scope of the deposition notice.

4 A So what I mean by that is that our
5 policy -- our procedures, steps we take, things
6 that we undertake, from time to time those are
7 reviewed, audited. And I would be surprised if
8 this particular practice weren't at some point
9 reviewed or audited. But again, I don't know of a
10 specific time in which this practice was reviewed.

11 Q It's your expectation that, like other
12 FBI practices, the practice of making ethnic maps
13 of ethnic communities in the United States would
14 have been reviewed like other practices. Correct?

15 A Right.

16 MS. POWELL: Objection.

17 Let me get my objection in.

18 Outside the scope of the deposition
19 notice, and asked and answered at this point.

20 A But, yes, my expectation would be at some
21 point that would be reviewed.

22 Q We don't have any audits or review

1 documents regarding the FBI's ethnic maps, and
2 certainly that would have a bearing on what the
3 FBI knows about the religious composition of the
4 watchlist among other things.

5 MS. POWELL: Not even remotely, I don't
6 think. But sorry, I'll let you get to your
7 question.

8 Q Okay. I'd like to go to the next page.
9 The next page, the top of the next Page 4.3.3.2.5.
10 I want you to read this, the heading is
11 Exploitative Ethnic Behavior. Let me know when
12 you're done, and then I'll ask you some questions
13 about it.

14 A Finished.

15 Q Do you see this, this part where it's
16 describing the existence of a cultural tradition
17 of collecting funds from members within the
18 community to fund charitable causes?

19 A I do see that, yeah.

20 Q Yeah. And it says, To fund charitable
21 causes in their homeland at a certain time of the
22 year?

1 A I see that, yes.

2 Q Is that talking about Ramadan?

3 Is that what that's talking about?

4 MS. POWELL: Objection as outside the
5 scope of the deposition notice and
6 mischaracterizing the document.

7 You can answer.

8 A No, I would -- not necessarily.

9 Q You don't think that that's -- are you
10 sure about that, it's not talking about Ramadan?
11 What else could it be talking -- I'm sorry. Let
12 me withdraw that question.

13 If it is not talking about Ramadan, what
14 else could it possibly be talking about?

15 MS. POWELL: Same objections as to scope
16 and form.

17 A I don't know what it could be talking
18 about here.

19 I think the point, just to give an
20 example of something that you could look at that
21 would be within scope or within policy.

22 Q Right. Exactly. I understand that.

1 Right? It's something you could look at that's
2 within scope and policy.

3 So something that the FBI could look at
4 that's within scope or policy is if, for example,
5 a community tends to give to charitable causes at
6 a specific part of the year?

7 Is that right?

8 MS. POWELL: Objection.

9 Mischaracterizes -- sorry, are you done?

10 MR. ABBAS: Yeah.

11 MS. POWELL: Yeah. Objection.

12 Mischaracterizes the document.

13 A Yeah, so, no, that's not what it's saying
14 here. So it's saying that if people give to
15 charitable causes at a particular time of the
16 year, and then that money goes to terrorism, then
17 that would be something that you would look at,
18 you would investigate.

19 Q You know, this is about -- you see that
20 heading, Exploitive Ethnic Behavior?

21 Do you see that?

22 A I do, yeah.

1 Q So is that exploitive ethnic behavior the
2 tradition that some people have of giving money to
3 charitable causes at specific times of the year?

4 MS. POWELL: Objection. Asked and
5 answered. Outside the scope of the deposition
6 notice. And again mischaracterizes the document.

7 A So I think the exploitive part of this is
8 when it talks about unwitting donors and their
9 money going to terrorism organizations. So
10 that's -- so the donations, the people collecting
11 the donations, are exploiting members to then
12 funnel money to a terrorist organization. I think
13 that would be my summary of -- or like -- yeah, my
14 summary of this here.

15 Q Let's just start with that first sentence
16 in this where it says, "A related category of
17 information that can be collected."

18 Do you see that?

19 A Yes.

20 Q Just reread that first sentence. And I'm
21 just going to talk to you about that first
22 sentence to begin with. Okay?

1 A Okay.

2 Okay. Finished.

3 Q So it's talking about a category of
4 information that's about how a community
5 functions. Right? Isn't that what that first
6 sentence is describing?

7 MS. POWELL: Objection. Outside the
8 scope of the deposition notice and as to form.

9 A Yeah, so I think it's talking about how a
10 community can be exploited. Like, that's --
11 that's the -- like the focus of that sentence to
12 me.

13 Like, my eyes go to "exploited by
14 criminal or terrorist groups."

15 Q Right. You know, my eyes go to the
16 "behavioral and cultural information about ethnic
17 or racial communities." But so that's -- that's
18 the part that I really want to understand what
19 that means. Okay?

20 A Yeah.

21 Q What does that mean, "behavior and
22 cultural information about ethnic or racial

1 communities," other than information that is about
2 the community rather than information that's about
3 specific individuals?

4 MS. POWELL: Objection. Mischaracterizes
5 the document and outside the scope.

6 A So for example, if a given community
7 donates money, and then a criminal or terrorist
8 entity can exploit that charitable contribution to
9 go to a criminal or terrorist end, then that would
10 be a collective behavior. Right? The charitable
11 giving of a community, if that's common within the
12 community, that would be the cultural behavior
13 there. That's not specific to a person. Like, a
14 group of people do that.

15 Q Okay. Are you aware of a group of people
16 in the United States that give to charitable
17 causes at a particular time of year?

18 MS. POWELL: Objection. Outside the
19 scope of the deposition notice, and as a form and
20 vagueness. And assumes facts not in evidence.

21 A Yes.

22 Q Is it the Muslims, the Muslims are giving

1 to charitable causes during Ramadan. Right?

2 MS. POWELL: Objection. Mischaracterizes
3 prior testimony. Assumes facts not in evidence.
4 And outside the scope of the deposition notice.
5 Sorry. Probably just make that a standing
6 objection at this point.

7 A So, yeah, my understanding is that
8 Muslims do give charitable contributions -- I
9 don't recall it -- at some point during Ramadan.
10 I don't know if it's at the beginning or the end
11 or during.

12 Q It's at a certain time of the year.
13 Right?

14 A Ramadan?

15 Q Right. Yeah.

16 A Yes, Ramadan is at a certain time of the
17 year.

18 Q Do you see that in the parentheses it
19 says, "And how that is accomplished"?

20 A Yes.

21 Q If there is a tradition that a community
22 has of giving funds to charitable causes at a

1 certain time of the year, it would be relevant to
2 the FBI how that community donates to fund the
3 charitable cause. Is that what that parenthetical
4 means?

5 MS. POWELL: Objection. Mischaracterizes
6 the document.

7 A So --

8 MS. POWELL: And outside the scope of the
9 deposition notice.

10 A So I read in this particular example,
11 "and how that is accomplished," to refer to like
12 the mechanism by which people contribute. So do
13 they give cash versus, you know, send funds
14 electronically. Like, that's how I read that.

15 Q Or by hawala. Are you familiar with that
16 term, "hawala"?

17 MS. POWELL: Objection. Outside the
18 scope of the deposition notice.

19 A I am familiar with that term.

20 Q That's one way some ethnic communities
21 make donations to fund charitable causes.

22 Correct?

1 MS. POWELL: Objection. Outside the
2 scope of the deposition notice.

3 A That would be one way.

4 Q And the FBI has concerns about hawala.
5 Right?

6 MS. POWELL: Objection. Outside the
7 scope of the deposition notice.

8 A I think it would be more accurate to say
9 we have a concern about nonlicensed money
10 remitters, not necessarily specifically hawala.

11 Q Has the FBI gathered information about
12 how the Muslim community funds charitable causes
13 during Ramadan?

14 MS. POWELL: Objection. Outside the
15 scope of the deposition notice, and to the extent
16 it calls for law enforcement privileged
17 information.

18 But I'm sure the witness can answer at a
19 high level generality.

20 A I'm not aware of us -- of the FBI
21 specifically researching Ramadan contributions.

22 Q You used the word "specifically," and

1 that's all -- you know, whenever you use
2 "specifically" or "generally," I'm generally going
3 to ask you about it.

4 A Sure. So --

5 Q What did you mean --

6 A So what I meant was, we may become aware
7 of those in the course of our investigations, but
8 I'm not aware of us setting out to research that.
9 Like, yeah, in the course of an investigation,
10 that may come to light. And if it comes to light
11 over and over again, then we would become broadly
12 aware of that practice.

13 MS. POWELL: Is it okay if we go another
14 20, 30 minutes before breaking for lunch? I don't
15 want to go too much longer than that. I'm an
16 early eater.

17 MR. ABBAS: We can break for lunch now,
18 that's fine. Do you want to break for lunch now?

19 MS. POWELL: How are you feeling?

20 THE WITNESS: Either way. Now or 30
21 minutes. Either way.

22 MS. POWELL: I'm okay breaking now,

1 because I'm hungry. Can we break for an hour?

2 MR. ABBAS: Yeah. Let's break for an
3 hour. Sounds good.

4 (A recess was taken.)

5 BY MR. ABBAS:

6 Q Could we go back to Exhibit 5, the
7 mapping document that we were looking at.

8 MS. POWELL: The one I instructed my
9 witness not to talk about at all?

10 MR. ABBAS: Oh, sorry. No. No. The
11 Exhibit 4. Exhibit 4.

12 MS. POWELL: Good.

13 MR. ABBAS: Okay.

14 Q Let's go to -- okay, we're in the right
15 place.

16 Does the FBI -- do you see where it says
17 The existence of the cultural tradition of
18 collecting funds at a certain time of year, you
19 know, what we were talking about right before
20 lunch?

21 A Yes.

22 Q So that's one example of behavioral and

1 cultural information about an ethnic community
2 that's relevant to the FBI's purposes?

3 MS. POWELL: Objection. Outside the
4 scope of the deposition notice and
5 mischaracterizes the document.

6 Q Go ahead.

7 A What was the question?

8 Q So to kind of catch us back up to where
9 we were before lunch. The first sentence talks
10 about a related category of information. Right?

11 A Yes.

12 Q And it describes that related category of
13 information as behavioral and cultural information
14 about ethnic or racial communities. Right?

15 MS. POWELL: Objection. Outside the
16 scope of the deposition notice and as to form.

17 A Yes.

18 Q And I just want to make sure I'm
19 understanding this document correctly.

20 Paragraph 4.3.3.2.5 provides an example
21 of this behavioral and cultural information.

22 Correct?

1 MS. POWELL: Objection as outside the
2 scope of the deposition notice.

3 A Yes.

4 Q And that example relates to a tradition
5 of giving to charitable causes at a particular
6 time of year. Right?

7 MS. POWELL: Objection. Outside the
8 scope of the deposition notice and
9 mischaracterizes the document.

10 A So the examples about collecting funds,
11 yes.

12 Q At a certain time of the year?

13 A Yes.

14 MS. POWELL: Same objections.

15 Q And before lunch I couldn't quite
16 remember so I'm going to just ask it again, is
17 this a reference to the Muslim Islamic tradition
18 of giving to charitable causes during Ramadan?

19 MS. POWELL: Objection. Outside the
20 scope of the deposition notice, and as to form.

21 A So I don't specifically know what this is
22 a reference to.

1 Q You have no idea. Right?

2 A No. I didn't write this. The author
3 would know for certain.

4 Q And this is my only chance to talk to the
5 FBI, and so unfortunately I have to ask you what
6 these words mean.

7 A Okay.

8 Q So with regards to Paragraph 4.3.3.2.5,
9 you don't know whether or not the cultural
10 tradition that they're talking about is the
11 Islamic tradition of giving to charitable causes
12 during Ramadan. Correct?

13 MS. POWELL: Objection as outside the
14 scope of the deposition notice. And asked and
15 answered.

16 A So I don't know for certain, no.

17 Q What do you think?

18 MS. POWELL: Same objections.

19 A That would seem to fit the example.

20 Q Are you aware of any other cultural or --
21 let's just stick with cultural traditions.

22 Are you aware of any other cultural

1 traditions that the FBI has examined about
2 particular ethnic or racial communities?

3 MS. POWELL: Objection as outside the
4 scope of the deposition notice and as to form and
5 vagueness, and to the extent it calls for law
6 enforcement privileged information.

7 I think the witness can answer.

8 A None come to mind, but I am certain there
9 are some.

10 Q Who at FBI would be responsible for
11 identifying the cultural traditions of an ethnic
12 or racial community?

13 MS. POWELL: Objection as to form and
14 vagueness and outside the scope of the deposition
15 notice.

16 A So I think that the way this would come
17 to light is you wouldn't necessarily be looking
18 for a cultural tradition. You would be looking
19 for in the course of an investigation the
20 exploitation of a certain practice. And then if
21 that occurred on more than one occasion, then you
22 would probably take a look at that more closely.

1 Q You said "you'd take a look at that more
2 closely." Is the "that" the tradition that's
3 specific to the ethnic or racial community?

4 MS. POWELL: Objection as to form.
5 Vagueness and outside the scope of the deposition
6 notice.

7 A It would be whatever is being exploited
8 for criminal or terroristic purposes, like you
9 would look at that.

10 Q Do you see how the example in 4.3.3.2.5
11 is about a community-wide practice, not an
12 individual practice. Right? We talked about that
13 before lunch?

14 MS. POWELL: Objection. Mischaracterizes
15 the document and outside the scope of the
16 deposition notice.

17 A It's about a behavior, a behavior.

18 Q And some behaviors are community
19 behaviors. Right?

20 MS. POWELL: Objection. Outside the
21 scope of the deposition notice. Form. Vagueness.
22 And mischaracterizes the document.

1 A Some behaviors are common within a
2 community, yes.

3 Q Other than the example provided in
4 4.3.3.2.5, do you know of any other community
5 behaviors that the FBI has collected information
6 about?

7 MS. POWELL: Objection. Outside the
8 scope of the deposition notice and as to form and
9 vagueness, and to the extent it calls for law
10 enforcement privileged information.

11 A Not specifically. But you could see
12 where if it were practice within a community to
13 meet at a certain location, at a certain time,
14 that may be of interest to investigators.

15 Q Like, for example, if Muslims congregate
16 on Friday afternoons, that could be something that
17 would be relevant to the FBI?

18 MS. POWELL: Objection. Mischaracterizes
19 the document and his prior testimony and is
20 outside the scope of the deposition notice.

21 A So I was thinking more broadly. If any
22 group conjugates at any -- at a location at a

1 known time and place, that would be useful to
2 investigators.

3 Q Do you know, one thing that fits the
4 broader category that you're describing is, you
5 know -- as you may know, Muslims gather for
6 congregational prayer Friday early afternoon.

7 Are you aware of this practice?

8 MS. POWELL: Objection. Outside the
9 scope of the deposition notice.

10 A I am aware of this practice.

11 Q Does the FBI have maps or writing where
12 Muslims congregate early afternoon on Fridays?

13 MS. POWELL: Objection. Outside the
14 scope of the deposition notice and
15 mischaracterizes the document and prior testimony.

16 And to the extent it calls for law
17 enforcement privileged information.

18 A So I would just go say again that map --
19 general Muslim maps, Arab maps, those fraud-based
20 type of maps that you're referring to, are not --
21 I don't see those as useful. I'm not aware of any
22 of those specific maps.

1 Q But your understanding is that the FBI
2 would keep track of the places an ethnic or racial
3 community gathers that would be information the
4 FBI views as relevant?

5 MS. POWELL: Objection. Mischaracterizes
6 the document, prior testimony, and is outside the
7 scope of the deposition notice.

8 A It could be investigatively relevant if
9 someone that you are investigating in a given
10 community meets at a specific place and time.
11 That would be useful to an investigator to know
12 that.

13 Q It would be useful if the FBI already had
14 the information before the investigation even
15 began. Right?

16 MS. POWELL: Objection as to form and
17 vagueness.

18 A So if there's no investigative interest,
19 then it would not be useful.

20 Q Mr. Langham, I'm going to give you a
21 for-example so we can flesh out what your
22 testimony is.

1 The FBI has conducted investigations of
2 people inside the Muslim community in the United
3 States. Right?

4 MS. POWELL: Objection as to form and
5 vagueness.

6 A They have, but not because they were
7 members of the Muslim community within the United
8 States.

9 Q And not just like one investigation.
10 There's been a lot of investigations that the FBI
11 has conducted of people inside the Muslim
12 community. Correct?

13 MS. POWELL: Same objection, and outside
14 the scope of the deposition notice.

15 A Yes. But again, not because they were
16 members of the Muslim community.

17 Q For all those investigations, was it --
18 would it be helpful to know where those people
19 might be congregating for prayer?

20 MS. POWELL: Objection as to form and
21 vagueness, and to the extent it calls for law
22 enforcement privileged information.

1 But you can answer.

2 A So it would -- like I said, it would be
3 of interest to know where any subject conjugates
4 at any given time, not just Muslims.

5 Q Has the FBI mapped all ethnic communities
6 in the U.S.?

7 MS. POWELL: Objection as to form and
8 vagueness, and to the extent it calls for law
9 enforcement privileged information.

10 But I'm pretty sure the witness can
11 answer.

12 A Not to my knowledge.

13 Q But the FBI has mapped some ethnic
14 communities. Correct?

15 MS. POWELL: Same objections, and outside
16 the scope of the deposition notice.

17 A Yes.

18 Q How many ethnic communities has the FBI
19 mapped?

20 MS. POWELL: Objection. Outside the
21 scope of the deposition notice, and to the extent
22 it calls for law enforcement privileged

1 information.

2 I suspect specific answers would be
3 subject to the privilege. Do you happen to know
4 the answer of how many?

5 THE WITNESS: I don't know.

6 MS. POWELL: Well, "I don't know" is not
7 privileged.

8 Q Is it more -- is it more than a hundred
9 ethnic communities that the FBI has mapped?

10 MS. POWELL: Same instructions.

11 And I instruct the witness -- same
12 objections, and I instruct the witness not to
13 answer, as well as reasserting my scope objection.

14 A I don't know how many communities it's
15 been.

16 Q When did the FBI start mapping ethnic
17 communities?

18 MS. POWELL: Objection. Outside the
19 scope of the deposition notice and --

20 A I don't know when we started doing that.

21 Q Sorry. Just one second.

22 MS. POWELL: Mr. Abbas, do you have any

1 explanation as to where in the topic areas you
2 think these questions fall?

3 MR. ABBAS: So, I mean, it falls in a lot
4 of different places.

5 For example, we think that the
6 government's response to the interrogatories about
7 the religious composition of the watchlist are --
8 you know, we don't buy them. And so we think that
9 the existence of these ethnic maps shows a
10 particular focus on particular communities.

11 MS. POWELL: So you think that falls
12 within the clarification and explanation of FBI's
13 interrogatory responses?

14 MR. ABBAS: I think that's -- I think
15 that's one place.

16 I think additionally, the --

17 MS. POWELL: Because you haven't
18 actually -- I not sure you've asked more than one
19 question about how this relates to the watchlist.

20 MR. ABBAS: Just remember, Amy, that the
21 witness is the one that brought up the relevance
22 of the geographic location of encounters, and,

1 obviously, the geographic location of encounters
2 is closely monitored.

3 And so this is -- you know, this is --
4 these questions are about us establishing the
5 relationship between the watchlist and the, in our
6 view, indiscriminate intelligence collection
7 practices that the FBI maintains.

8 MS. POWELL: I understand your position.
9 I am maintaining my objection that these are
10 outside the scope of the notice.

11 MR. ABBAS: Okay.

12 Q So the FBI, does the FBI train its agents
13 to navigate the particular behaviors and practices
14 of different ethnic and racial communities?

15 MS. POWELL: Objection as to form and
16 vagueness.

17 A We do have cultural awareness trainings
18 and things of that nature.

19 Q The FBI teaches its agents about
20 different ethnic and racial communities. Correct?

21 MS. POWELL: Objection as to form and
22 vagueness and outside the scope of the deposition

1 notice.

2 A I have taken training that provide
3 information on certain culture -- certain ethnic
4 groups or cultures.

5 Q And, Mr. Langham, you're testifying on
6 behalf of the FBI and so I have to ask it, you
7 know, to the FBI.

8 Does the FBI train its agents about the
9 particular practices of different ethnic and
10 racial communities?

11 MS. POWELL: Objection as to form and
12 vagueness and outside the scope of the deposition
13 notice.

14 A Yeah, so I think the reason I used this
15 specific example, because I think it's very
16 specific to a given agent.

17 So, for example, prior to me going to
18 Afghanistan, I was trained on the culture and
19 practices of Afghans. But if you are
20 investigating healthcare fraud, you might not
21 receive that training, that specific training. So
22 that's why I kind of made it more specific.

1 Q I'm not sure what you mean.

2 A I don't --

3 MS. POWELL: Same objection. And an
4 objection as to form.

5 But go ahead.

6 A So I don't know that all agents
7 bureau-wide receive any specific training on
8 cultural practices or behaviors.

9 Q Some agents do, though?

10 MS. POWELL: Objection as to form and
11 outside the scope.

12 A Yeah, some agents do.

13 Q Do the agents that make the maps receive
14 training about ethnic and racial communities?

15 MS. POWELL: Objection as outside the
16 scope of the deposition notice.

17 A I don't -- I don't know what specific
18 training the personnel who make the maps have
19 received.

20 Q Does the FBI employ any anthropologists
21 to help with the creation of these maps?

22 MS. POWELL: Objection as to form and

1 scope and outside the scope of the deposition
2 notice.

3 You can answer.

4 A I don't know if we have any
5 anthropologists to help with the maps.

6 Q Let's -- I want to go to the page above
7 this, I think that's the third page of the PDF,
8 Paragraph 4.3.3.2.4 just right above it. The
9 Specific and Relevant Ethnic Behavior.

10 Read this, and I'm going to ask you a few
11 questions about it.

12 A Okay.

13 Okay, I'm finished.

14 Q Do you see that second sentence where it
15 says, "Focused behavioral characteristics"?

16 Do you see that phrase?

17 A Yes.

18 Q What does that mean, "focused behavioral
19 characteristics"?

20 MS. POWELL: Objection. Outside the
21 scope of the deposition notice.

22 A So one example that comes to mind is if

1 you're -- if you're investigating an individual,
2 and that individual goes to a specific location,
3 that specific location may be of interest if it's
4 a restaurant. But not -- obviously not all
5 restaurants are of investigative interest.

6 So it's trying to focus the behavior. So
7 not going out to eat, not going to restaurants;
8 but maybe going to a specific restaurant is of
9 interest.

10 Q Like restaurants that serve or cater to
11 Muslim customers, for example?

12 MS. POWELL: Objection. Mischaracterizes
13 the document and his testimony and is way outside
14 the scope of the deposition notice.

15 A No. I was thinking more of like an
16 organized crime example; where, you know, a
17 certain restaurant is relevant and it's maybe
18 actually -- it turns out to be a meeting place,
19 it's focused. It's not every person that goes to
20 every restaurant.

21 Q Got it. Like specific restaurants.
22 Right?

1 A Yeah. I think going to a specific
2 location, not just -- yeah, more focused than just
3 general.

4 MS. POWELL: At the risk of beating a
5 dead horse, it has been by my count roughly an
6 hour and a half since you asked a question
7 remotely related to the deposition topics. We're
8 obviously going to take the position that none of
9 this is stuff you can use at summary judgment
10 related to the FBI's position.

11 Are we going to move on at some point?

12 MR. ABBAS: I mean, this stuff is all
13 super relevant. So, you know, I just -- to
14 comment, you know, I know you all are living this
15 work every day, you know, in and out. And so it
16 might not kind of sound shocking to you. But
17 certainly in our mind the FBI acknowledging that
18 it maintains ethnic maps of different communities
19 would suggest to any I think reasonable observer
20 the distinct possibility that it's focusing on
21 just the -- a particular community and those maps
22 would show and reveal that. And so, you know,

1 it's kind of broadly relevant and certainly
2 inconsistent with things that the FBI has said in,
3 you know, signed sworn Answers to Interrogatories.

4 It sure seems like the FBI has some idea
5 about the religious composition of the watchlist,
6 based on the testimony we've heard so far.

7 MS. POWELL: He hasn't told you anything
8 about religious composition even of these maps.
9 But if you thought these maps were relevant you
10 could have included them as a topic and we would
11 have fought about it.

12 MR. ABBAS: Okay. Let's go to -- I think
13 we uploaded a new document. If we go to that
14 document next, and I think that will be Exhibit 6.

15 (FBI Exhibit 6 marked for identification
16 and is attached to the transcript.)

17 (A discussion was held off the record.)

18 Q So this is Exhibit 6. Exhibit 6 is the
19 McQueen declaration, with some information
20 about -- some numerical information about the
21 watchlist. It is four pages long. And let's go
22 down to the very bottom.

1 Mr. Langham, do you know Mr. McQueen?

2 A I do know -- I do know him.

3 Q Do you work with him?

4 A Yeah, I do work with him.

5 Q In the context of your role in the
6 watchlist?

7 MS. POWELL: Objection as to form.

8 A So he was the domestic terrorism
9 operations section section chief, and I am the
10 international terrorism operations section section
11 chief. So we both are -- were at one time in the
12 same branch of the counter-terrorism division, and
13 so we got to know each other fairly well.

14 Q Great. You know him as an honest
15 straight shooter. Right? Never mind. I scratch
16 that question.

17 So let's go to the bottom of Page 2, and
18 Paragraph 5 at the bottom of Page 2 is a table
19 reflecting the individual people that were added
20 to the watchlist.

21 A Yes, I see it.

22 Q Do you see how in 2012 about 106,000

1 individuals were placed on the watchlist?

2 A I do see that, yes.

3 Q And then the next year it increased by 50
4 percent.

5 Do you see that?

6 MS. POWELL: Wait. Okay.

7 A Yeah, I see that it increased to about
8 157,000, yes.

9 Q What is the FBI's explanation for that
10 dramatic increase between 2012 and 2013 of the
11 number of people added to the watchlist?

12 MS. POWELL: Objection as to outside the
13 scope of the deposition notice, and to the extent
14 it calls for law enforcement privileged
15 information.

16 I don't know if there is a general answer
17 you can give.

18 A I don't know what the cause of the
19 increase was.

20 Q Does the FBI know what the cause of the
21 increase was?

22 MS. POWELL: Objection. Outside the

1 scope of the deposition notice.

2 A No. I mean, other than, you know, there
3 were significant -- there were more individuals
4 who met the criteria, that would be the -- I think
5 the answer to that.

6 Q How about the difference -- do you see by
7 2019 more than 230,000 people were added to the
8 watchlist in that year alone.

9 Do you see that?

10 A I do, yes.

11 Q And then now in 2023 that number is less
12 than a quarter of what it was in 2019.

13 Do you see that?

14 A I see the 52,000 number at the bottom,
15 yes.

16 Q That's a really big change, isn't it?

17 MS. POWELL: Objection as outside the
18 scope of the deposition notice.

19 A It's a significant change.

20 Q Does the FBI know why there was such a
21 dramatic change in the number of individuals added
22 to the watchlist in 2019 versus in 2023?

1 MS. POWELL: Objection as outside the
2 scope of the deposition notice.

3 I think the witness can answer yes or no
4 or I don't know without implicating the law
5 enforcement privilege.

6 A No, I don't know.

7 Q Do you have any explanation at all -- is
8 the only explanation that you have for the
9 variations in the number of people added to the
10 watchlist on a year-to-year basis that it was just
11 the number of people that qualified for inclusion
12 varied?

13 MS. POWELL: Objection as outside the
14 scope of the deposition notice, and to the extent
15 it calls for law enforcement privileged
16 information.

17 A I mean, it's definitely a result of the
18 increase in the number of individuals qualifying,
19 but I don't know if there's an explanation for the
20 increases or the subsequent decrease here.

21 Q Has the FBI ever asked itself, Why is it
22 in 2023 we added less than 25 percent of the

1 people that we did add in 2019? Has it ever asked
2 that question?

3 MS. POWELL: Objection. Sorry. Are you
4 done?

5 MR. ABBAS: Yeah.

6 MS. POWELL: Objection. Outside the
7 scope of the deposition notice, and as to form and
8 misleading.

9 A So we may have -- I think -- I don't
10 believe that that would be a useful analysis. I
11 think the more useful analysis would be is there
12 an increase in, you know, international or
13 domestic terrorism investigations, and what would
14 be the cause behind that, rather than looking at
15 watchlisting. I just don't see that as relevant.

16 Q You don't think it -- okay. Well, first
17 we'll discuss and certainly I'll want to establish
18 what your testimony is about these numbers and why
19 they are or are not relevant to anything.

20 I just want to understand whether there's
21 been an assessment first. Whether an assessment
22 exists, whether somebody has asked the question.

1 And then we'll talk about what, if anything, the
2 FBI has come up with. Okay? So --

3 MS. POWELL: Just for clarity purpose,
4 you're asking about these numbers, right, which
5 aren't specific to FBI, not in general?

6 MR. ABBAS: Yeah, I'm asking about these
7 numbers, yeah.

8 MS. POWELL: Okay.

9 Q The FBI is aware of the number of people
10 that are added to its watchlist on a year-to-year
11 basis. Right?

12 MS. POWELL: Objection. Assumes facts
13 not in evidence.

14 A So based on this document, yes, we are.

15 Q The FBI monitors how many people get
16 added to the watchlist?

17 MS. POWELL: Objection. Assumes facts
18 not in evidence and outside the scope of the
19 deposition notice.

20 And I'm sorry, when we talk about FBI, we
21 are talking about FBI exclusive of TSC. Right?

22 MR. ABBAS: You know, they're to me the

1 same thing. So, you know, I'm asking -- I'm
2 talking to the FBI about FBI stuff.

3 MS. POWELL: All right. So you have a
4 whole other deposition of TSC who is prepared to
5 talk about TSC's statistics. He is prepared to
6 talk about FBI exclusive of TSC, and not speak on
7 behalf of TSC today.

8 MR. ABBAS: If the FBI has no idea how
9 many people were added to the watchlist, that's an
10 answer. And we would love to have that answer,
11 just kind of clearly established.

12 And so if the answer is the FBI does not
13 monitor how many people get added to the watchlist
14 on a yearly basis, that's fine, that's an answer,
15 and I'll move on.

16 But in my mind it is very important, the
17 number of people that are added to the watchlist.

18 MS. POWELL: The point of clarity I think
19 is actually helpful to both of us, whether you're
20 talking about FBI's awareness including TSC who
21 presumably you will ask about these numbers they
22 gave you, and whether FBI exclusive of TSC

1 otherwise tracks those numbers.

2 MR. ABBAS: Yeah, I'm probably going to
3 ask both of them the same questions with regard to
4 these numbers and see what they both say.

5 MS. POWELL: Well, I guess for the sake
6 of clarity, I'm going to ask the witness to answer
7 sort of exclusive of any knowledge he has of what
8 TSC tracks, just sort of otherwise what FBI
9 tracks.

10 A So within the FBI I think we have the
11 ability to calculate these numbers on any given
12 year. I don't know that we monitor, as you say,
13 these numbers.

14 Q You've never been to a meeting about the
15 50 percent increase in nominations to the
16 watchlist, that's never happened at the FBI? I'm
17 just asking honestly because I don't know.

18 I would think -- I would think that if
19 your workload doubled in a number of years, that
20 you'd need to respond in some kind of staffing way
21 about that.

22 That's not what happened here?

1 MS. POWELL: Objection. Again for
2 clarity's purposes, right, these aren't limited to
3 FBI nominations. So I just ...

4 MR. ABBAS: All right. I think let's
5 just -- I will ask a question.

6 MS. POWELL: Okay.

7 Q I'm going to ask you, Mr. Langham,
8 testifying on behalf of FBI, a question that
9 regards a comparison of the individuals added in
10 2012 to 2019. Okay? Here goes.

11 Does the FBI have any explanation for why
12 between 2012 and 2019 the number of individuals
13 added to the watchlist more than doubled?

14 MS. POWELL: Objection. Outside the
15 scope of the deposition notice, outside the scope
16 of the witness's reasonable knowledge. And to the
17 extent it calls for a law enforcement privileged
18 information.

19 But you can answer.

20 A So I know I'm here on behalf of the FBI.
21 But there may be an explanation that the FBI has
22 posed for this increase. As I sit here, I am not

1 aware of that explanation.

2 And the other thing I would add is, like,
3 we don't look at work and resources in terms of
4 the number of people added to the watchlist.
5 We -- so investigations take resources, operations
6 take resources. So if we were talking about
7 resources, we would be talking about possibly the
8 number of investigations that we have, not the
9 number of people added to the watchlist.

10 So I just put that out. The premise of
11 having a meeting to talk about people added to the
12 watchlist, I'd be surprised if that meeting ever
13 happened. Because again, that's just not how we
14 think of things.

15 Q It didn't take more resources to put
16 231,000 people on the watchlist than it did
17 105,000 people on the watchlist?

18 MS. POWELL: Objection. Assumes facts
19 not in evidence.

20 Q Let me withdraw that question.

21 Did it take more resources in 2019 to put
22 231,000 people on the watchlist than it did in

1 2012 to put 105,000 people on the watchlist?

2 MS. POWELL: Same objection. Assumes
3 facts not in evidence, and as to outside the scope
4 of the deposition.

5 A So assuming that the FBI put more people
6 on the watchlist, that would require more effort.
7 But again, that's a fraction of the effort that it
8 takes to conduct more investigations or do more
9 operations. So that would be the context around
10 which we would have a resource discussion, not
11 watchlisted individuals.

12 Q The FBI has never felt the crunch with
13 its, like, watchlist work force that they were
14 overextended?

15 MS. POWELL: Objection as to form and
16 vagueness.

17 A So watchlist work force would primarily
18 exist in the TSC. We nominate people for the
19 watchlist in the context of investigations,
20 typically. And so -- and again, it's one process.
21 So we would need more personnel to deal with an
22 increase in investigations for sure. We would

1 likely not need an increase in personnel to keep
2 up with watchlisting.

3 Q Why is that?

4 MS. POWELL: Objection as to form.

5 A Because if you think of the life cycle or
6 the lifespan of an investigation, the amount of
7 time it takes to nominate someone to the watchlist
8 and then modify their entry into the watchlist and
9 then perhaps remove them at the end of the
10 investigation from the watchlist, that's a very
11 small amount of time relative to the amount of
12 time it takes to actually conduct the
13 investigation.

14 Q But isn't it different people doing that?

15 MS. POWELL: Objection as to form.

16 A No. I mean, it's largely within the FBI
17 the same people conducting the investigations as
18 it is nominating and approving nominations for
19 watchlisting.

20 So, like, it would be like saying you're
21 driving somewhere and it's far. Like it takes a
22 long time to drive there. And then you're asking,

1 Well, wouldn't every time you have to start your
2 car, that take longer? No. Because when you
3 start your car that only takes a short period of
4 time. And then how far you drive is the time
5 that's relevant or important. But, like, it's a
6 small, like, amount of time within the context of
7 an investigation.

8 Q Break it down for me a little bit. What
9 is the metaphor, like the car driving part?

10 A So when we open an investigation, we
11 nominate someone for watchlisting. Right?

12 Q Stop right there. I'm sorry to interrupt
13 you. I just want to kind of get that part, make
14 sure I have that.

15 Is that automatic for every single person
16 that you open an investigation on, you put them on
17 the watchlist?

18 MS. POWELL: Objection as to form, and to
19 the extent it calls for law enforcement privileged
20 information.

21 There is a general answer the witness can
22 give, though.

1 A So we nominate everyone who meets the
2 reasonable suspicion standard, and we -- it is a
3 requirement to nominate subjects of terrorism
4 investigations, yes.

5 Q You said "subject of terrorist
6 investigations." Is that in like -- contrary to
7 what? Targets of investigations?

8 MS. POWELL: Objection as to form and
9 vagueness.

10 A Well, so we refer to the -- whoever the
11 investigation is of, we refer to them typically as
12 the subject, not the target.

13 Q Go ahead.

14 A That's, just, we use those terms.

15 Q So you're explaining that the
16 investigation began, somebody gets put on the
17 list, and then what happens?

18 A My only point to that is that the
19 investigation in and of itself is the part that's
20 labor intensive, that's resource intensive,
21 that -- and if you see an increase in the number
22 of investigations, that likely would result in an

1 increased need for resources, not watch -- not
2 necessarily watchlisting.

3 Q Because there's not a lot of time that
4 goes into accepting the nominations for inclusion.
5 Is that what you're saying?

6 MS. POWELL: Objection as to form and
7 vagueness and mischaracterizes his testimony.

8 A No. Because it doesn't take a lot of
9 time to add or modify or -- and again, we submit
10 for. We don't do that in and of ourselves. But
11 to add or modify information in the watchlist,
12 that doesn't take much time relative to the
13 entirety of the investigation, that is labor
14 intensive and resource intensive.

15 Q Does the FBI have automated processes of
16 adding people to the watchlist?

17 MS. POWELL: Objection as to form.

18 A No. My understanding of the process is
19 that it needs to be submitted manually, I guess.
20 Or it takes -- it's not automated. It needs to be
21 submitted by an investigator.

22 Q Does the FBI use artificial intelligence

1 to determine who should be considered for
2 inclusion in a watchlist?

3 MS. POWELL: Objection as to form and
4 vagueness, and to the extent it calls for law
5 enforcement privileged information. I think
6 there's probably a general answer the witness can
7 give.

8 A No, I don't believe so.

9 Q Okay. A few more questions about this
10 chart. Does the number of individuals added to
11 the watchlist have anything to do with the
12 government's amendment to the watchlist inclusion
13 standard?

14 MS. POWELL: Objection to the extent it
15 calls for law enforcement privileged information.

16 But I think the witness can answer
17 without getting into that.

18 A No, I don't believe so.

19 Q As far as you know, the revision to the
20 inclusion standard hasn't had any effect on the
21 number of people that's been added to the list.

22 Correct?

1 MS. POWELL: Objection, in that a
2 comprehensive answer would call for law
3 enforcement privileged information, and asked and
4 answered.

5 But I think you can get to the general
6 answer.

7 A No, I don't believe the change in the
8 standard has led to any of these changes.

9 Q Does the FBI anticipate any changes in
10 how its personnel will use the TSDB inclusion
11 standard as a result of changes to the inclusion
12 standard?

13 MS. POWELL: Objection as to form and
14 calls for speculation.

15 But I think the witness can answer.

16 A No, I don't believe so. As I said, it
17 was an insignificant change and it wasn't meant to
18 change the product; it was just to make the
19 guidance more clear.

20 Q Did the FBI identify in any data about
21 the operation of a watchlist an indication that
22 the watchlist inclusion standard was being misused

1 or abused?

2 MS. POWELL: Objection to the extent it
3 called for deliberative process or law enforcement
4 information.

5 But I think the witness can answer.

6 A Not to my knowledge.

7 Q Is it your understanding that pretty much
8 everybody any agency asks to be placed on the
9 watchlist is placed on the watchlist?

10 MS. POWELL: Objection as to form and
11 vagueness. And to be honest, I think I just
12 missed the beginning of your question. So if you
13 don't mind asking it again, that might be helpful.

14 MR. ABBAS: Yeah, sure.

15 Q Is it your understanding that pretty much
16 anybody any agency requests to be added to the
17 watchlist is added to the watchlist?

18 MS. POWELL: Objection as to form and
19 vagueness.

20 But I think the witness can answer.

21 A So you mean the addition of an individual
22 to the watchlist?

1 Q Yeah. Uh-huh.

2 A No. So there are certain criteria that
3 need to be met. So certainly not any nomination
4 would be accepted.

5 Q Again, I'm asking like a historical
6 factual question, not something in the past.

7 The number of individuals added to the
8 watchlist -- I'm sorry, let me do it this way.
9 Let me make sure I understand you correctly.

10 Are you saying that the number of
11 individuals added to the watchlist is a smaller
12 number than the number of individuals agencies
13 requested to be added to the watchlist?

14 MS. POWELL: Objection as to form and
15 scope, to the extent you're asking outside of FBI
16 nominations. And to the extent it calls for law
17 enforcement privileged information.

18 But I think he can answer to the question
19 as asked.

20 A Yeah, so there's a situation where the
21 nomination doesn't have the required information
22 and so then it would not be accepted.

1 Q Right. And my question is about how
2 often that happens.

3 How often is it that somebody submits a
4 nomination to the watchlist and that nomination is
5 not accepted for any reason?

6 MS. POWELL: So objection to the extent
7 it calls for law enforcement privileged
8 information.

9 But I think the witness could give any
10 general answer he knows.

11 A No, I don't know how often that happens.

12 Q You don't know whether it happens more
13 than 99 percent of the time?

14 MS. POWELL: Objection as to form and
15 vagueness and mischaracterizes prior testimony.
16 And asked and answered.

17 A No, I don't know how often it happens.

18 Q Do you have any idea about how often it
19 happens? Does it happen most of the time?

20 MS. POWELL: Objection. Asked and
21 answered.

22 A I don't know how often that happens.

1 Q I understand you don't have specific
2 information about how often it happens. I think
3 you should. So now I'm asking at a higher level
4 of generality to try to kind of ask around it.

5 Do you know whether it's typically the
6 case that nominations submitted for -- I'm sorry,
7 let me start again.

8 Do you know whether it's generally the
9 case that when an agency nominates a person to
10 that watchlist, that that person ends up on the
11 watchlist?

12 MS. POWELL: Objection as outside the
13 scope of the deposition notice and asked and
14 answered.

15 A I don't know how often nominations are
16 not accepted.

17 Q Do you have any sense of whether it's a
18 common occurrence for a nomination to not be
19 accepted or an uncommon occurrence for a
20 watchlist --

21 MS. POWELL: Objection as to form and
22 asked and answered and calls for speculation.

1 Like at some point we're going to have to accept
2 the "I don't know" answer here.

3 A I don't know if it's -- how common or
4 uncommon it is for a nomination to be ...

5 Q Let's go to the next paragraph. The next
6 paragraph, Paragraph 6, is on the next page.

7 Okay. I want you to take a look at Paragraph 6,
8 and I'm going to ask you a few questions about
9 Paragraph 6.

10 A I have read it.

11 Q Okay. What's your understanding of the
12 term modification -- well, are you familiar with
13 that term, "modification nomination"?

14 A I am, yes.

15 Q My understanding is that a modification
16 nomination is a request to change the contents of
17 a TSDB record. Is that right?

18 A Yes, my understanding is -- yes, that's
19 right.

20 Q Okay. I'm going to ask you a question
21 about the difference between the 2012 modification
22 nominations and the 2017 modification nominations.

1 Do you see how between 2012 and 2017 the
2 number of modifications almost tripled?

3 A I do see that, yeah.

4 Q Does the FBI have any explanation for why
5 between 2012 and 2017 the number of modification
6 nominations tripled?

7 MS. POWELL: Objection as beyond the
8 scope of the FBI's deposition notice. Those are
9 overall numbers.

10 A I don't know why. I don't know why the
11 increase of numbers in modifications.

12 Q Has the FBI ever asked itself why over
13 the course of five years the number of
14 modification nominations almost tripled?

15 MS. POWELL: Objection as to outside the
16 scope of the FBI's deposition and assumes facts
17 not in evidence.

18 A I don't know that we've analyzed that.

19 Q You don't know whether or not the FBI has
20 analyzed that?

21 A That's right. That's right, I don't
22 know.

1 Q Do you see -- now the next question is
2 about 2017 and 2018 numbers. Okay?

3 A Yeah.

4 Q Does the FBI have any explanation about
5 why, after almost tripling over the course of five
6 years from 2012 to 2017, in one calendar year it
7 cut itself more than half, do you know why?

8 MS. POWELL: Same objections. Outside
9 the scope of the FBI's deposition notice. And
10 assumes facts not in evidence.

11 A I don't know that we've taken a look at
12 that.

13 Q Did the FBI automate the process of
14 making nomination -- I'm sorry. Has the FBI ever
15 automated the process of making modification
16 nominations to the watchlist?

17 MS. POWELL: Objection as to form and
18 vagueness. I think that's all.

19 A No, not to my knowledge. I mean, no. I
20 mean, I don't know, I should say.

21 Q You don't know whether or not the FBI has
22 automated the process of submitting modification

1 nominations. Correct?

2 A So we have changed the process and made
3 it internal within Sentinel. But I don't know
4 when exactly that change occurred and doubt that
5 it has anything to do with this increase or
6 decrease.

7 Q You said internal to Sentinel. Is
8 that -- did I catch that phrase right?

9 A So the way that modifications work is
10 that we do -- we do a form and we nominate the
11 individual for inclusion in the TSDS. And -- yes.
12 And it seems like to me over the course of time
13 that that would have been modified -- that would
14 have been modernized, but I can't provide -- I
15 don't know specifics with regard to that.

16 Q Sentinel contains a lot of -- that's
17 where the FBI puts its investigative files, it's
18 in Sentinel. Right?

19 A Yes, that's right.

20 Q So the FBI has the ability to make
21 modification nominations within Sentinel.

22 Correct?

1 A Yes, that's my understanding.

2 Q And the FBI doesn't know what accounts
3 for the tripling of modification nominations
4 between 2012 and 2017. Right?

5 MS. POWELL: Objection. Asked and
6 answered. And objection as outside the scope of
7 the FBI's deposition notice.

8 A So I don't -- like I said, I don't
9 have -- I don't have an explanation for the
10 increases and decreases in the number of
11 modification nominations. I can't say that the
12 FBI has not, doesn't have an explanation for this.

13 Q Has the FBI automated the process in
14 Sentinel of -- let me start again.

15 Has FBI automated any part of the process
16 it has to make modification nominations within
17 Sentinel?

18 MS. POWELL: Objection as to form and
19 vagueness. I think it might actually be useful to
20 define what you mean by "automated" here. I think
21 y'all might be using it differently.

22 MR. ABBAS: I'd like to know

1 Mr. Langham's answer. I think he knows what I'm
2 getting at.

3 A So the process is now -- can be done
4 within Sentinel.

5 Q Yeah, I get that the process can be done
6 within Sentinel. Not -- only FBI agents have the
7 ability to make modification nominations within
8 Sentinel. Correct?

9 MS. POWELL: Objection as to form and
10 vagueness.

11 A I don't know that -- whether or not there
12 are exceptions, but primarily the job to nominate
13 and modify it falls to special agents.

14 Q I just want to know about the
15 modification nominations now. We'll maybe circle
16 back to the add nominations.

17 But the modification nominations, so I
18 just want to understand how this works. A
19 person's already on the watchlist. So that person
20 has an entry in the TSDS. Correct?

21 A I'm sorry, say that again?

22 Q Yeah. It's not a question. I just want

1 to make sure I'm understanding each step of it.

2 A person, once they're placed on the
3 watchlist, they're going to have an entry in the
4 terrorism screening data set, the watchlist.

5 Right?

6 A If they meet the criteria, right.

7 Q And a person who's on the watchlist is
8 going to have an entry in Sentinel. Right?

9 MS. POWELL: Objection. Assumes facts
10 not in evidence.

11 A There will be evidence of their
12 nomination and modifications to the watchlist
13 within Sentinel.

14 Q What is Sentinel going to have that the
15 TSDS does not have?

16 A So it's not -- they serve two different
17 functions. So the Sentinel is for investigative
18 files, and the TSDS and the watchlist is for a
19 different purpose.

20 MS. POWELL: I would like to take a break
21 sometime soon. It doesn't have to be right now,
22 but just a quick ten-minute break.

1 MR. ABBAS: Yeah. Okay. Just a few more
2 questions on this.

3 Q Aren't there people at the FBI that are
4 making modification nominations about people that
5 they're not investigating?

6 MS. POWELL: Objection as to form and to
7 the extent it calls for law enforcement privileged
8 information.

9 But you can answer.

10 A While that may occur, that's not
11 typically how it's done. Typically it's the
12 investigator that adds or modifies the nomination.

13 MR. ABBAS: Okay. Yeah, do you want to
14 come back at 2:20 -- or 2:22 or 2:25, do you want
15 to do that?

16 MS. POWELL: That works.

17 MR. ABBAS: Okay. See everybody at 2:25.

18 (A recess was taken.)

19 MR. ABBAS: If we could get the exhibit
20 back up. I think it was Exhibit 6 that we were
21 looking at. Okay. Let's scroll down a little
22 bit.

1 BY MR. ABBAS:

2 Q You see Paragraph 8, just that first --

3 A I do.

4 Q You're aware that the watchlist can be
5 queried by name. Right?

6 A Yes.

7 Q Is there a religious community that you
8 associate with the name Muhammad?

9 MS. POWELL: Objection as outside the
10 scope of the deposition notice.

11 A I associate Muhammad with Islam.

12 Q The FBI has that basic understanding of
13 reality that Muhammad is an Islamic name that
14 Muslims give to their children often?

15 MS. POWELL: Objection. Mischaracterizes
16 prior testimony.

17 A I have that basic level of understanding,
18 yes.

19 Q And the FBI would have that basic level
20 of understanding as well. Right?

21 MS. POWELL: Same objections.

22 A Yes.

1 MR. ABBAS: Could we go to Exhibit 4 real
2 quick. That's the -- Exhibit 4, the mapping
3 document. Yeah. Exactly -- exactly there.

4 Q Would the behavior of naming your
5 children Muhammad be kind of specific and relevant
6 behavior that the FBI might take into account
7 pursuant to Paragraph 4.3.3.2.4?

8 MS. POWELL: Objection as to form and
9 vagueness. Mischaracterizes the document.

10 A No, I don't think we would take into
11 account what someone's named.

12 Q Do you see -- review Paragraph 8 -- I'm
13 sorry, let's go back to Exhibit 6. Just Paragraph
14 8 and the first bullet point. And then I'm going
15 to ask you a few questions about that.

16 A Okay.

17 Q Is it surprising to you that about
18 one-sixth of all watchlist entries have the name
19 Muhammad in it?

20 MS. POWELL: Objection to form and
21 outside the scope of the deposition notice.

22 A I guess I'm not surprised by that.

1 Q Why not? Why aren't you surprised by
2 that?

3 MS. POWELL: Objection to form and
4 outside the scope of the deposition notice.

5 A So I'm not surprised by that for a couple
6 of reasons.

7 One is, my understanding is that Muhammad
8 is an extremely common name worldwide. The TSDS
9 is meant to be a global database, not just a
10 U.S.-specific database. And the fact that, you
11 know, Islamic terrorist organizations, their
12 membership is composed mostly of Muslims, that
13 those things taken together may account for the
14 large number of times or the significant number of
15 times that Muhammad appears in the TSDS.

16 Q Has the watchlist focused on Muslims?

17 MS. POWELL: Objection as to form and
18 vagueness.

19 MR. ABBAS: Let me withdraw that.

20 Q I want to ask you a few questions. So
21 you gave two rationales for why there are so many
22 Muhammads on the watchlist. Right? I want to

1 break them up, and then I want to make sure first
2 that there's only two. If there's more, let's
3 itemize them.

4 The first rationale for why there's so
5 many Muhammads on the watchlist is that it's a
6 global list.

7 Was that the rationale?

8 MS. POWELL: Well, to be clear, Gadeir,
9 just for the sake of clarity, your question was
10 not why are there so many Muhammads on the list.
11 It was are you surprised by this and why not. If
12 you want to ask the why are there so many
13 Muhammads on the list, maybe you should do that
14 separately.

15 MR. ABBAS: That's great advice, Amy.
16 I'm going to take it.

17 MS. POWELL: I'm full of good advice.
18 Everybody should listen to me.

19 Q Do you know why there were so many
20 Muhammads on the watchlist?

21 MS. POWELL: Objection as to form as to
22 the question asked. And also as outside the scope

1 of the deposition notice.

2 But you can answer.

3 A So I don't know. I would speculate that,
4 again, it's because the TSDS is not specific to
5 the United States; it's a global list, combined
6 with the fact that Muhammad is an extremely common
7 name, or at least that's my understanding that
8 it's a very common name.

9 And again, the fact that Islamic
10 terrorist groups like Hamas and Al-Qaeda and ISIS,
11 their membership is composed primarily if not
12 exclusively by Muslims.

13 Q And has the FBI focused its watchlisting
14 efforts on Islamic groups?

15 MS. POWELL: Objection as to form and
16 vagueness. And to the extent it calls for law
17 enforcement privileged information.

18 But the witness can answer to the level
19 of generality.

20 A So we watchlist both domestic terrorists
21 and international terrorists.

22 Q And some of the terrorists are Muslim and

1 some of them are not Muslim. Right?

2 A Yes, that's right.

3 Q The thing that I struggle with the most
4 is, look at the number of Muhammads. Okay? We're
5 just going to talk about Muhammad first, and then
6 we'll expand it. You look at the number of
7 Muhammads, 325,000.

8 Do you see that?

9 A I do, yes.

10 Q And now let's go to the next page with --
11 and look at Query E and Query F.

12 Do you see the Query E names?

13 Do you see those?

14 A Yes.

15 Q There are -- they're Hispanic names. Do
16 you understand those to be Hispanic names?

17 MS. POWELL: Objection as to form and
18 outside the scope of the deposition notice.

19 A I do.

20 Q Do you see how there's only 16,000 of
21 those extremely common Hispanic names on the
22 watchlist?

1 A I see that.

2 Q What accounts for the disparity between
3 there being almost no extremely common Hispanic
4 names, way less than 1 percent and one-sixth,
5 fully one-sixth of the watchlist has the name
6 Muhammad?

7 MS. POWELL: Objection as to form and
8 outside the scope of the deposition notice.

9 A So what I would say is what that means
10 specifically is that individuals with these
11 Hispanic names only almost 17,000 of them meet the
12 criteria for watchlisting; as opposed to the
13 individuals named Muhammad, of which I forget the
14 number, 300,000 meet the standard for
15 watchlisting.

16 So you need to meet the standard for
17 watchlisting to be included in the TSDS.

18 Q It sure seems like your focus at the FBI
19 on the Muhammads. Tell me why I'm wrong to think
20 that.

21 MS. POWELL: Objection as to form.
22 Outside the scope of the deposition notice.

1 Outside the scope of the FBI's knowledge, and
2 mischaracterizes prior testimony.

3 Q All right. Let me withdraw that.

4 Am I wrong to think that the FBI is
5 focused narrowly on the Muhammads and not the
6 Garcia, Rodriguez, Martinez, Hernandez, and so on?

7 MS. POWELL: Objection as to form and
8 misleading.

9 A But you are wrong. We are not focused on
10 Muhammads. We're not focused on -- like, name in
11 and of itself is not useful. So we're not focused
12 on any specific name, whether that be Muhammad or
13 David.

14 Q I know you're not focused on David. If
15 you look at Query F, let's take a look at Query F.
16 You see those names James, Robert, John, Michael,
17 do you see those names?

18 A Yeah.

19 Q You understand those names to be very
20 common names. Right?

21 MS. POWELL: Objection as to form.

22 Assumes facts not in evidence and outside the

1 scope of the deposition notice.

2 A They may be common names. I don't know
3 that they're as common as the name Muhammad.

4 But again, my point is that names,
5 regardless of what the name is, in and of itself
6 is not a useful metric to measure the FBI's
7 interest. Because we don't investigate someone
8 because of their name.

9 Q Mr. Langham, and I understand that you're
10 disagreeing with me, perhaps.

11 A Yeah.

12 Q But it will come as no surprise to you
13 that I think that the FBI uses its watchlist
14 against a particular community. Okay? That's
15 what I think. And so I'm asking you questions
16 about that theory, that the FBI uses its watchlist
17 to -- against the Muslim community.

18 And so what I'm asking you about is the
19 people on the list. Surely if one-sixth of the
20 list has the name Muhammad, you must understand at
21 some level that most of the people on the list are
22 Muslim.

1 Is that fair?

2 MS. POWELL: Objection as to form.
3 Misleading and assumes facts not in evidence.

4 A Yeah, so there's not an entry for
5 religion in the watchlist. Religion is not
6 something that's important or relevant in
7 watchlisting. So, yeah, reference to religion is
8 just incidental.

9 And I disagree with the premise that we
10 are focused on Muslims because they are Muslims.

11 Q Are you -- yeah, I don't -- because
12 they're Muslims. Okay? So let's set that to the
13 side. Okay? About why you're -- why, if you are
14 focused on Muslims, why you happen to be focused
15 on Muslims. I just want to know, is the FBI with
16 its watchlisting practices, focused on Muslims?

17 MS. POWELL: Objection as to form.
18 Vagueness. And to the extent it calls for law
19 enforcement privileged information, and asked and
20 answered. But ...

21 A So watchlisting is focused on terrorists,
22 domestic and international terrorists, not on

1 Muslims.

2 Q Okay. Let's go to Query B. You know,
3 you see Query B has in addition to ten common
4 spellings of Muhammad --

5 A I don't see Query B.

6 Q I'm sorry. Let's scroll up a little bit.

7 A I see it now, yeah.

8 Q Muhammad, Ahmad, and Mahmud are like
9 William, Billy, and Bill, it's like versions of
10 the same name.

11 Do you see how there's 492,000 watchlist
12 entries with just those -- just those three names?

13 MS. POWELL: Objection as to form.

14 A I see that, yes.

15 Q Does it surprise you that with just three
16 names we can capture almost half a million entries
17 on a watchlist with just three names?

18 MS. POWELL: Objection as to form.

19 Assumes facts not in evidence. And outside the
20 scope of the deposition notice.

21 A So again, it's not surprising. I think
22 that those three names are probably extremely

1 common. The TSDS is a global list. And so -- and
2 then if you look at the membership of
3 international terrorist organizations, you would
4 have to concede that their member -- a number of
5 their members likely have or are known to have
6 these names.

7 Q Is the FBI focused on the communities
8 that have the names in Query B?

9 MS. POWELL: Objection as to form and
10 asked and answered.

11 A The FBI is focused on preventing
12 terrorist attacks, that's what the FBI is focused
13 on.

14 Q So just -- it just so happens that the
15 people with the Muslim names are the ones
16 committing most of the terrorism?

17 MS. POWELL: Objection. Assumes facts
18 not in evidence.

19 A I wouldn't be so flippant to say it just
20 so happens. But what I would say is that no one
21 is on the TSDS that doesn't meet the standards,
22 and that apparently nearly 500,000 people who

1 happen to have the name Muhammad meet the standard
2 for watchlisting.

3 Q Let's go to Query C.

4 So, now, what we've done in Query C is,
5 we've just taken the full name of the Prophet
6 Islam Muhammad Abd Allah, peace be upon us. We've
7 taken its full name and we've broken it out into
8 the 30 most common iterations of parts of this
9 name. Okay?

10 So just -- just the prophet Islam's name
11 alone, we're just staying on one person's name,
12 that's one-third of the entire watchlist.

13 Do you see that? It's one-third at
14 627,000 number?

15 A Yes, I do see that.

16 Q To my eyes, this shows very clearly a
17 focus on a particular group of people that's
18 inclined to name their kids after the prophet of a
19 major religion.

20 Is that -- is that what it looks like to
21 the FBI as well?

22 MS. POWELL: Objection as to form and

1 outside the scope of the deposition notice.

2 But you can answer.

3 A So not at all. We don't investigate
4 anyone because of their name. Like we would never
5 open an investigation on anyone just because their
6 name was Muhammad. So in no way does that mean
7 that to me.

8 And again, I think you would have to
9 acknowledge that Islamic terrorist groups, their
10 membership is composed of Muslims, and these names
11 are extremely common within the Muslim community.

12 Right?

13 Q Yeah. Yeah. Yeah. No, I agree. I
14 agree with that. Yeah.

15 So is the watchlist focused on the groups
16 of people that use these names?

17 MS. POWELL: Objection as to form and
18 vagueness and outside the scope of the deposition
19 notice.

20 But you can answer.

21 A No. The watchlist is focused on
22 international and domestic terrorists.

1 Q Does the FBI believe that -- do you know
2 that we have obtained a purportedly leaked copy of
3 the 2019 watchlist? Is that something you're
4 aware of?

5 MS. POWELL: I am going to instruct the
6 witness not to answer any questions about the
7 purportedly leaked copy of the 2013 watchlisting
8 guidance.

9 MR. ABBAS: Oh, I'm not asking about the
10 2013 watchlisting guidance, I'm sorry. I'm asking
11 about the 2023 leaked copy of the 2019 watchlist.

12 Q Are you aware --

13 MS. POWELL: Oh, okay. Sorry. I was
14 confused.

15 Q And I'm not asking you to confirm, deny,
16 anything other than are you aware of the public
17 controversy around a regional air carrier posting
18 the 2019 copy of the watchlist to the internet?

19 Are you aware of that public controversy?

20 MS. POWELL: I think the witness could
21 answer whether or not he's aware of the
22 controversy without otherwise responding to the

1 question.

2 A I am aware of it.

3 Q That controversy happened last year,
4 right, in 2023. Correct?

5 MS. POWELL: I think you can answer yes,
6 no, I don't know.

7 A 2022, 2023, so, yeah. Somewhere in
8 there. Yes.

9 Q Got it.

10 Are you aware of another controversy in
11 2006 when 60 Minutes got a leaked copy of the
12 watchlist?

13 MS. POWELL: Similar instruction. I'm
14 obviously going to instruct him not to answer the
15 question as asked. If you want to rephrase, I
16 suspect there is a yes-or-no question he can
17 answer that would not confirm or deny the
18 authenticity of anything.

19 MR. ABBAS: I'm not -- yeah.

20 Q So to kind of emphasize, I'm not asking
21 for information about the authenticity of any
22 purported leaked copies, either 2022, 2023, or

1 2006 or the mid 2000s.

2 I'm just asking about, is the FBI aware
3 of a public controversy in 2006 regarding 60
4 Minutes obtaining a copy of the watchlist?

5 MS. POWELL: Again, you asked it as
6 though he is aware of 60 Minutes obtaining a copy
7 of the watchlist, which would tend to confirm or
8 deny the authenticity of the document.

9 How about I just instruct him that he
10 can't confirm or deny the authenticity of the
11 document; but he could confirm, deny, or say he
12 doesn't know whether or not he is aware of the 60
13 Minutes story you're referencing.

14 A Yeah, I'm not aware of the 60 Minutes
15 story.

16 Q Are you aware of any other public
17 controversies around the watchlist being leaked to
18 people not authorized to receive it?

19 MS. POWELL: Objection as to form, and to
20 the extent it's asking him to confirm or deny
21 authenticity of anything that has purportedly been
22 leaked, I'd instruct him not to answer.

1 I feel like he can probably answer at a
2 level of generality.

3 A So other than the leak that I
4 acknowledged knowing about, the controversy
5 surrounding, that's the only one that I'm aware
6 of.

7 Q Are you aware of public allegations that
8 the leaked copy of the watchlist shows the list to
9 be mostly Muslims?

10 MS. POWELL: Objection as to form. And
11 to the extent it calls for law enforcement
12 privileged information.

13 I think you can answer as to whether or
14 not you're aware of the general controversy.

15 A No, I'm not.

16 Q Has anybody at the FBI ever inquired as
17 to whether the people on the list are almost all
18 Muslims?

19 MS. POWELL: Objection as to form, and to
20 the extent it calls for deliberative process
21 privileged information.

22 But the witness can answer in general

1 terms.

2 A Again, we don't look at the list in terms
3 of religious composition, so that's not useful.
4 Reference to religion is incidental.

5 Q It just doesn't look that way when you
6 look at the names. Right? It doesn't look like
7 religion is incidental. Instead, when you look at
8 the names on the list, it looks like it's almost
9 completely made up of Muslims. That's what I'm
10 struggling to understand.

11 Why -- how did you get so many Muslim
12 names on the list if not for a focus on Muslims?

13 MS. POWELL: Objection as to form and
14 argumentative.

15 A I think -- you know, I think that's a
16 flawed way to look at it. I don't think we are
17 looking at any -- I know we are not looking at any
18 particular religious group because of their
19 religion or any individuals because of their name.

20 We are looking -- investigating
21 individuals. And if they meet the threshold for
22 watchlisting, they're watchlisted. And if they

1 don't, they are not. So it's -- it is not focused
2 on any religious group.

3 Q Are you sure about that?

4 MS. POWELL: Objection as to form, and
5 asked and answered.

6 A Yes.

7 MR. ABBAS: Could we take five minutes?
8 Is that all right? Could we take a five-minute
9 break?

10 MS. POWELL: Actually, why don't we go
11 ahead and make ten.

12 MR. ABBAS: Perfect. Ten-minute break,
13 even better. Thank you.

14 (A recess was taken.)

15 MR. ABBAS: Can we project the 2021 rog
16 responses. And we'll make that Exhibit 7.

17 (FBI Exhibit 7 marked for identification
18 and is attached to the transcript.)

19 BY MR. ABBAS:

20 Q Exhibit 7 is the 2021 Merits defendants'
21 objections and responses to interrogatories.
22 Let's go, to begin with -- could we scroll to the

1 bottom of Page 3.

2 Take a look at that Interrogatory 1.
3 Read it. Let me know when you're done. I am not
4 going to ask you questions yet. I'll take you to
5 another part of the document that I want you to
6 look at, and then I'll ask you some questions.

7 A Can you move it up just a little bit.

8 Q Just the interrogatory. I don't think
9 you need to read the gobbledygook.

10 A I'm sorry.

11 MS. POWELL: Noting the gobbledygook
12 contains things like our objections to
13 definitions. That he may not need to read, but do
14 in fact inform our response.

15 MR. ABBAS: Sure. I'm just trying to ask
16 a human being a question. And so, you know --

17 THE WITNESS: I just need the
18 interrogatory moved up to like --

19 MR. ABBAS: Yeah, the middle? You want
20 it in the middle of the screen? Do you see the
21 interrogatory --

22 THE WITNESS: Yeah, that would be

1 perfect, the middle of the screen.

2 MR. ABBAS: If you go up a little bit,
3 that bolded text at the bottom of Page 3. Down.
4 Exactly that. Put that in the middle. Perfect.
5 Thank you. Thank you, sir. All right. The
6 thumbnail was covering up the document, that was
7 our problem. Okay.

8 A Okay, I've read it.

9 Q Okay. So now just keep that in front.
10 We're going to the FBI's answer to this question.
11 Okay? And then I have some questions about the
12 answer. Okay?

13 MR. ABBAS: So if we can go to the bottom
14 of Page 8. Skip over everybody else's answer. A
15 little bit further. Okay. There we go.

16 Q Yeah, so it's a few pages. So read this
17 one, let me know, and then we'll get to the next
18 page. And then we'll have you read that next page
19 and I'm going to ask you some questions about it.

20 A Yeah, they can move it up.

21 Q Great.

22 A You can move it up. Move it up. Move it

1 up. Okay, I'm finished.

2 Q Is it true that -- I'm sorry, does the
3 FBI screen FBI employees against the watchlist?

4 MS. POWELL: Objection as to form and
5 vagueness.

6 A So we would screen potential FBI
7 employees against numerous databases. And I would
8 expect that the TSDS would be one of them.

9 Q Do you know whether or not the FBI
10 screens its employees against the watchlist?

11 A Not with any certainty, but I assume that
12 we do, yes.

13 MR. ABBAS: It's going to be very hard to
14 ask the designee questions, clarifying questions
15 if he's not sure about how the FBI uses the
16 watchlist, at least to the level of detail
17 provided in the answers. But let's try to do our
18 best.

19 Q Does anybody -- has anybody at FBI been
20 fired for being assigned a watchlist status?

21 MS. POWELL: Objection as to form and
22 vagueness.

1 A I'm not aware of anybody being fired
2 because they were on the watchlist.

3 Q Does the FBI have employees on the
4 watchlist? Probably not. Right? You don't have
5 employees -- the FBI does not have employees who
6 are on the watchlist. Right?

7 MS. POWELL: Objection as to form and
8 vagueness and assumes facts not in evidence.

9 A Like you said, probably not.

10 Q Because the watchlist is -- does not --
11 is not looked upon favorably for federal
12 government employment. Right?

13 MS. POWELL: Objection as to form and
14 vagueness and misleading.

15 A But, no, it would not be looked upon
16 favorably for eligibility.

17 Q It wouldn't be looked on favorably for
18 employment eligibility. Correct?

19 MS. POWELL: Objection as to form and
20 vagueness.

21 A Correct.

22 Q It wouldn't -- a person's watchlist

1 status wouldn't be -- if it had a status, wouldn't
2 be looked on favorably if they were a contractor
3 working for a company working for the federal
4 government. Right?

5 MS. POWELL: Same objection. And goes
6 beyond the scope of the FBI deposition notice.

7 A So a contract employee on the watchlist
8 would not be looked at favorably.

9 Q The FBI plays a special role in
10 investigating people for security clearances.

11 Right?

12 MS. POWELL: Objection as to form and
13 vagueness and outside the scope of the deposition
14 notice.

15 MR. ABBAS: I just want to -- like, you
16 know, I'm asking about the interrogatory
17 responses. While I've put the interrogatory
18 responses in front of him, there is a topic. The
19 topic was to ask him questions, a designee, about
20 the stuff that they swore to in their
21 interrogatory responses. And so I'm not clear on
22 how what I'm asking is outside the topics. Tell

1 me.

2 MS. POWELL: Because you're asking about
3 FBI's duties beyond the scope of their use of the
4 watchlist. And your previous question before that
5 was about other agencies' use, not just FBI's. So
6 that's why I objected to the previous question as
7 beyond the scope.

8 Q Does the FBI use the watchlist in
9 security clearance investigations?

10 A In security clearance investigations, the
11 FBI conducts numerous database checks, of which a
12 search of the TSDS would almost certainly be one
13 of them.

14 Q You don't know for sure whether the FBI
15 uses the watchlist for security clearance
16 investigations. Right?

17 MS. POWELL: Objection as to form and
18 mischaracterizes prior testimony.

19 A So, and I know I'm here representing the
20 FBI. But that is a very
21 security-division-specific question. And so I've
22 worked not in security my career, my entire

1 career, but national security. And so while I
2 understand that we conduct background
3 investigations, and as part of that we conduct
4 numerous database checks, I am assuming that one
5 of those is the TSDS. And if someone is in the
6 TSDS, that would be looked at not favorably.

7 Q But you don't -- you can't tell me
8 whether the first sentence at the top of Page 10
9 is true or not true?

10 MS. POWELL: That's a slight --
11 objection. Misleading. Because the first
12 sentence is a different question than the one you
13 just asked.

14 A So --

15 MS. POWELL: About people who use NCIC.

16 MR. ABBAS: This is -- just to comment,
17 remind everybody, this is the FBI's answer. Okay?
18 So I understand. I think what we're coming across
19 is that the FBI's answer uses passive voice,
20 information may also be used. Okay? So I'm
21 asking Mr. Langham for clarification because of
22 the passive voice.

1 Q Who -- okay. So let's just break it up
2 into little teeny tiny pieces. Does the FBI play
3 a role in screening people for security
4 clearances?

5 A Yes.

6 Q Does the FBI in that role use the
7 watchlist?

8 A Again, we search numerous databases, and
9 the watchlist would be one of them almost
10 certainly.

11 Q But you're not sure. Right?

12 MS. POWELL: Asked and answered at this
13 point. He went with almost certainly several
14 times, and you're turning that into an I don't
15 know instead of an almost certainly. Almost
16 certainly is pretty much the best we get at these
17 depositions ever in response to any question.

18 Q I just -- you know, so Mr. Langham, I'm
19 interested in knowing whether people on the
20 watchlist are excluded from federal employment in
21 their entirety, categorically. And so let me
22 start with the general question --

1 A So I can answer that question.

2 Q Yeah.

3 A So not categorically. So watchlisting
4 status is one of the factors that's considered
5 along with other factors in that type of decision.

6 Q But if you're on a watchlist, the FBI is
7 not going to give you a security clearance.

8 Right?

9 MS. POWELL: Objection. Mischaracterizes
10 prior testimony.

11 A Being on the watchlist would definitely
12 be considered in the -- in providing someone -- in
13 the decision as to whether or not to provide
14 someone a security clearance, yes.

15 Q It even factors into a decision about
16 letting somebody into a government building.

17 Right?

18 MS. POWELL: Objection as to form and
19 vagueness and to the extent it's outside the scope
20 of the FBI's answer.

21 A I believe it would weigh into the
22 decision of -- as to whether or not to bring

1 someone into some government buildings, yes.

2 Q Do you know which buildings you're
3 referring to when you say "some government
4 buildings"?

5 MS. POWELL: Objection as to form, and to
6 the extent it calls for law enforcement privileged
7 information.

8 Do you know whether there is a general
9 answer you can give? Because I suspect specific
10 buildings and what they search is going to be
11 privileged.

12 A I would suspect that buildings that house
13 sensitive information or, you know, are somehow
14 involved in national security investigations or
15 operations, like those types of facilities.

16 Q Like the White House? Would the White
17 House be one of those facilities?

18 MS. POWELL: Objection as to form and
19 vagueness. And instruct the witness not to answer
20 on the grounds of law enforcement privilege.

21 Q Does the FBI know whether the White House
22 uses the watchlist to determine which invitees are

1 allowed in?

2 MS. POWELL: Objection as outside the
3 scope of the definition -- of the deposition
4 notice, and to the extent it calls for law
5 enforcement privileged information.

6 I think you can answer whether -- as to
7 whether or not you know.

8 A No, I don't know for sure. I mean, I
9 think it would be -- that would be a question for
10 secret service.

11 Q Why do you think it would be a question
12 for secret service?

13 A Because in my experience they control who
14 goes in and out of the White House or locations
15 where a protectee is present.

16 Q So the information in NCIC includes the
17 watchlist. Right?

18 A It includes the KST file.

19 Q That's the watchlist. Right?

20 MS. POWELL: Objection. Assumes facts
21 not in evidence.

22 A It includes the -- it has 21 files, and

1 the KST file is among them.

2 Q I'm just asking what the KST file is.
3 The KST file with the watchlist. Correct?

4 MS. POWELL: Objection as to form.
5 Assumes facts not in evidence. And we've asserted
6 the law enforcement privilege over the precise
7 nature of exports to various systems that would
8 include NCIC. If the witness can describe that in
9 general terms without describing specific fields
10 that are exported and that sort of thing, you can
11 answer.

12 A So the KST file is exported to NCIC.
13 Yes, that's my understanding of it.

14 Q Who decided to do that? What agency
15 decided to export the watchlist to the NCIC?

16 MS. POWELL: Objection as to form and
17 vagueness.

18 But you can answer, if you know.

19 A I don't know what agency made that
20 decision.

21 Q Was it the FBI?

22 MS. POWELL: Objection as to form and

1 vagueness.

2 A I don't know if it was the FBI.

3 Q Whatever is in NCIC is available to tens
4 of thousands of entities. Right?

5 MS. POWELL: Objection as to form and
6 assumes facts not in evidence.

7 A It's available to a large number of
8 entities, yes.

9 Q Do you know that number to be in the tens
10 of thousands?

11 A I don't recall as I sit here what that
12 number is. I don't -- I can't say.

13 Q It's every single law enforcement agency
14 in the country. Correct?

15 MS. POWELL: Objection. Assumes facts
16 not in evidence.

17 A So law enforcement agencies are one group
18 that has access to NCIC, yes.

19 Q There are tens of thousands of law
20 enforcement agencies in the country. Right?

21 A Yeah, that's probably right. Yeah.

22 Q So there are tens of thousands of

1 agencies that have access to the watchlist via
2 NCIC. Right?

3 MS. POWELL: Objection as to form and
4 vagueness and assumes facts not in evidence.

5 A Yes.

6 Q Why is the FBI giving tens of thousands
7 of entities access to a secret watchlist?

8 MS. POWELL: Objection as to form.
9 Vagueness. And assumes facts not in evidence.

10 A So I don't think that the KST -- the KST
11 file is unclassified, so we're not -- but the
12 purpose behind including the KST file in NCIC is
13 so that when law enforcement agencies encounter
14 someone on the watchlist, they will be notified of
15 that. Yeah, that's why.

16 Q How is that worked out?

17 MS. POWELL: Objection as to form and
18 vagueness.

19 A What do you mean how is that worked out?

20 Q Has that been an effective thing, the FBI
21 disseminating its watchlist to tens -- I'm sorry,
22 let me start in a different place.

1 It doesn't seem to be very sensitive, if
2 you're giving it to tens of thousands of law
3 enforcement agencies. Is that -- is there
4 anything -- is there any other sensitive thing
5 that the FBI makes available to tens of thousands
6 of separate agencies?

7 MS. POWELL: Objection as to form and
8 vagueness and outside the scope of the deposition
9 notice.

10 A So I would say that, you know, although
11 that may be considered sensitive information, that
12 access to NCIC is tightly controlled and subject
13 to audits. So it's not as if it's just provided
14 to anyone.

15 Q Does the FBI know the names of all the
16 users that have access to the NCIC?

17 MS. POWELL: Objection as to form and
18 vagueness. I think the witness can answer.

19 A I believe users do have to register, and
20 so that would be something that we could determine
21 if necessary.

22 Q The FBI does know who has access to the

1 NCIC.

2 Is that your testimony today?

3 MS. POWELL: Objection. Mischaracterizes
4 prior testimony.

5 A So I don't know that we know it. I
6 believe that through -- that we could obtain that
7 information through research and audits, if
8 necessary.

9 Q I'm just flagging, I'm not sure that
10 that's accurate. And to the extent that it's --
11 I'm asking a detailed question, so I'm not
12 faulting you, Mr. Langham. But I'm just flagging
13 this specific issue as something that may be what
14 we revisit after a break.

15 Have you heard the terminology, the
16 downstream versus upstream dissemination?

17 MS. POWELL: Objection as to form and
18 vagueness.

19 A No, I'm not familiar with that.

20 Q You're not familiar with the idea that in
21 the watchlisting community there's a dissemination
22 of watchlist information that's downstream?

1 A So I'm familiar with the inclusion of the
2 KST in NCIC. But I guess I don't know what you
3 mean by "downstream."

4 Q My understanding is that you all provide
5 NCIC access to tens of thousands of law
6 enforcement agencies, and then those law
7 enforcement agencies decide who has access
8 themselves.

9 Is that right?

10 A So access to NCIC, like I said, is
11 tightly controlled, it's audited. It's subject --
12 the use of it is dictated by the CJIS security
13 policy, which is substantial. So all of those
14 things apply to use of NCIC.

15 And in addition, not everyone -- I
16 think -- I think that's a mischaracterization to
17 say that just anyone gets access to NCIC.

18 Q It's every single law enforcement officer
19 in the country has access to NCIC. Right? It's
20 all of them?

21 MS. POWELL: Objection. Mischaracterizes
22 prior testimony and assumes facts not in evidence.

1 Q Isn't that right?

2 A So in general criminal justice agencies
3 like law enforcement agencies have access to NCIC.
4 Noncriminal justice agencies like social workers
5 and things like that, agencies like that who would
6 benefit from access to NCIC, have access to NCIC.
7 And then authorized private users have access to
8 NCIC. Those are the three categories of entities
9 that have access to NCIC.

10 Q Why is it -- who decided that social
11 workers would have access to the KST file, or what
12 purpose does that serve giving social workers
13 access to the terrorist watchlist?

14 What do you expect them to do with that?

15 MS. POWELL: Objection as to form and
16 vagueness.

17 And I think you can answer.

18 A So in my mind, the purpose of giving
19 social workers access to NCIC is not focused on
20 giving them access to the KST file. But you would
21 want to know if someone who has access to children
22 has a relevant criminal history. So that seems

1 pretty logical to me.

2 Q How is a social worker supposed to know
3 what to do with a person's watchlist status?

4 MS. POWELL: Objection as to form and
5 vagueness.

6 A Yeah, so I don't know that that inclusion
7 on the KST file would be relevant to a social
8 worker.

9 What I was saying is, access to NCIC
10 would be relevant to a social worker.

11 Q Yeah, so I'm asking specifically about
12 the KST file. Okay?

13 So my understanding based on your
14 testimony, is that there are social workers that
15 have access to the terrorist watchlist through
16 NCIC.

17 Is that correct?

18 MS. POWELL: Objection as to form, and
19 assumes facts not in evidence.

20 A So I tried to lay out the three groups of
21 entities that have access to NCIC.

22 My understanding is that even with NCIC

1 there are different levels of access. And again,
2 access to NCIC is tightly controlled, and use of
3 NCIC is audited.

4 Q I don't think you answered my question,
5 but let me ask a different one.

6 Has the FBI ever identified an NCIC user
7 who has misused the NCIC, you know, in a manner
8 that's related to the KST file?

9 MS. POWELL: Objection as to form and
10 vagueness.

11 But I think you can answer.

12 A Not to my knowledge.

13 Q Is the FBI's -- has the FBI ever looked
14 or audited to see what NCIC users are doing with
15 the KST file in NCIC?

16 MS. POWELL: Objection as to form and
17 vagueness.

18 A The use of NCIC is subject to audits,
19 yes.

20 Q Has the FBI ever audited the NCIC to
21 determine whether the KST file was used properly
22 or improperly?

1 A To my knowledge, that audit has not been
2 done. I don't know.

3 Q The KST file wasn't always a part of
4 NCIC.

5 Is that right?

6 MS. POWELL: Objection as to the scope of
7 the deposition notice.

8 A I don't know when it became a part of
9 NCIC.

10 Q The NCIC is always different from the KST
11 file. Right?

12 A I suspect that to be true, but I don't
13 know that to be true.

14 Q In the history of the watchlist, has the
15 NCIC ever led to the arrest of a person for a
16 terrorism-related crime?

17 MS. POWELL: Objection as to form. And
18 vagueness, and to the extent it calls for law
19 enforcement privileged information.

20 But the witness can answer.

21 A Can you read back that question?

22 Q Yeah. Let me say it in a little

1 different way.

2 The idea of disseminating the watchlist
3 to tens of thousands of law enforcement agencies
4 is that one of these law enforcement officers is
5 going to pull someone over, screen them against
6 the watchlist, and uncover a terrorist plot.

7 Is that the idea?

8 MS. POWELL: Objection to form and
9 vagueness.

10 A No. I think providing the watchlist to
11 law enforcement is to -- it will, first of all,
12 notify the officer that they have encountered
13 someone on the watchlist. And then when that is
14 provided back to the FBI, that will generate
15 investigative leads for the FBI investigators.

16 Q So the information you collect from
17 listees that you encounter get fed back into the
18 system to generate more people on the watchlist.

19 Right?

20 MS. POWELL: Objection as to form and
21 vagueness.

22 I'm sorry, was the question it leads to

1 more people on the watchlist? Sorry. The witness
2 can answer.

3 Q Yeah.

4 A No. The objective is not to generate
5 more people on the watchlist.

6 Q You know, but you're collecting
7 information from them, and you said for the
8 purpose of generating investigative leads.

9 Is that right?

10 A No. You're not collecting information
11 from them. So if an officer encounters someone on
12 the watchlist, and we kind of talked about this,
13 but in let's say the subject lives in Washington,
14 DC, and they're encountered in Pennsylvania, there
15 could be investigative value into knowing why they
16 were in that location at that time. So that would
17 be an investigative lead.

18 Q Okay. I want to go back to the question
19 I think you didn't answer.

20 Has it ever happened that some law
21 enforcement officer has encountered a person on a
22 list and made a terrorism-related arrest?

1 Has that ever happened?

2 MS. POWELL: Objection as to form and
3 vagueness. And to the extent it calls for law
4 enforcement privileged information.

5 I would instruct the witness not to
6 answer as to specific examples, but he can
7 certainly say as to whether or not he knows if it
8 ever happened.

9 A So I don't know of any instances where a
10 local law enforcement was notified of the presence
11 of an individual on the watchlist and then made an
12 arrest based on that.

13 Q How about federal law enforcement
14 officers; do you know of an instance where a
15 federal law enforcement officer encountered a
16 person on a watchlist and made a terrorism-related
17 arrest during that encounter?

18 MS. POWELL: Same objections and same
19 instruction. I think the witness can answer as to
20 whether or not he is aware of any.

21 A So I don't know any instances where an
22 arrest was made because that individual was on the

1 watchlist, like.

2 Q Let me ask you about the encounter
3 itself, whether the encounter led to a
4 terrorism-related arrest. And you've answered the
5 question about local law enforcement. Now same
6 question about federal law enforcement.

7 Federal law enforcement officers also
8 encounter people on the watchlist. Correct?

9 A Yes.

10 Q Does FBI know of any federal law
11 enforcement encounter with a person on the
12 watchlist that has led to a terrorism-related
13 arrest?

14 MS. POWELL: Same objections.

15 And instruct the witness not to answer as
16 to specific examples, but he can answer as to
17 whether or not he's aware of specific examples
18 that meet those specific criteria.

19 A I'm not aware of a specific arrest made
20 based on subject's presence on the watchlist.

21 Q Do you know, it's been 21 years almost of
22 the watchlist. Isn't that a really clear

1 indication that the watchlist isn't working, that
2 it's never led to a terrorism-related arrest ever?

3 MS. POWELL: Objection. Mischaracterizes
4 prior testimony and assumes facts not in evidence.

5 A No, I don't think that that's -- that's
6 not the conclusion I would draw from that.

7 Q Tell me what -- does the FBI believe that
8 its use of the watchlist is effective?

9 A Yes.

10 Q The basis of its belief certainly isn't
11 the number of terrorism-related arrests during
12 watchlist encounters, right, because there's been
13 zero. Right?

14 MS. POWELL: Objection. Assumes facts
15 not in evidence, and mischaracterizes prior
16 testimony.

17 A So I think our characterization of the
18 watchlist as effective is based on the
19 notification to local law enforcement that they've
20 encountered some unknown or suspected terrorist.
21 The investigative leads that are generated from
22 that encounter.

1 And then also I know of instances
2 where -- without getting into specifics -- where
3 individuals have been prevented from traveling
4 overseas to join terrorist organizations because
5 of their inclusion on the watchlist.

6 Q If you have information about somebody
7 who might be traveling overseas, that person's
8 under investigation. Right?

9 MS. POWELL: Objection as to form and
10 vagueness.

11 A Traveling overseas to join a terrorist
12 organization?

13 Q Right. If you're arresting somebody or
14 investigating somebody for planning to join an
15 overseas terrorist organization, that person is
16 already under investigation. Right?

17 A Yeah, so I didn't say that's why they
18 were under investigation. So they were under
19 investigation, yes.

20 Q And so because they were under
21 investigation, that's how the FBI knew that they
22 were traveling or planning to travel overseas to

1 join a terrorist organization. Right?

2 MS. POWELL: Objection as to form and
3 vagueness and assumes facts not in evidence.

4 A So the incidents I'm thinking of, the
5 individual was under investigation, went to the
6 airport without our knowledge, and attempted to
7 travel and was turned around because of their
8 inclusion on the watchlist.

9 Q Who was turned around?

10 MS. POWELL: Objection. Instruct the
11 witness not to answer on the grounds of the law
12 enforcement privilege and sensitive security
13 information, to the extent it calls for it.

14 A What was the question?

15 MS. POWELL: I instructed you not to
16 answer, so ...

17 Q Right. So just make sure we have your
18 attorney's instructing you not to answer, but I am
19 just going to ask the question so we have a clean
20 record.

21 What is the name of the person that
22 you're referring to?

1 MS. POWELL: Same instruction on the
2 grounds of law enforcement privilege and
3 potentially sensitive security information.

4 Q Was that person arrested?

5 MS. POWELL: Objection, to the extent it
6 calls for law enforcement privilege or sensitive
7 security information.

8 I think -- I think you can answer that,
9 as to whether or not the person was arrested.

10 A Eventually that person was arrested, yes.

11 Q Was it a secret indictment of that
12 person?

13 MS. POWELL: Objection, as to the extent
14 it calls for information under seal.

15 However, I suspect the witness can answer
16 as to whether there were public charges.

17 A It was not a secret indictment, no.

18 Q Does this regard India, like travel to
19 India, or the Mumbai attacks?

20 MS. POWELL: Objection.

21 Actually, I'm going to instruct the
22 witness not to answer on grounds of law

1 enforcement privilege.

2 Q Okay. Let's go to -- I'm sorry.

3 MR. ABBAS: We're going to upload the
4 Griffith declaration. Just one second.

5 Okay. Do you see it? It is the NCIC
6 document.

7 (FBI Exhibit 8 marked for identification
8 and is attached to the transcript.)

9 MR. ABBAS: Exhibit 8 is the Griffith
10 declaration.

11 Q Mr. Langham, do you know Mr. Griffith?

12 A What's his full name?

13 Q Brian D. Griffith?

14 A Actually I don't, no.

15 Q That's okay. FBI is a very big place.

16 A Yes.

17 Q Let's go down to the second-to-last page,
18 Page 4, Paragraph 9.

19 I'll ask you to review Paragraph 9 and
20 the chart below it, and then I'm going to ask you
21 a few questions about it.

22 A Okay, I'm finished.

1 Q Do you understand that the chart is how
2 many times the NCIC has been used? Correct?

3 MS. POWELL: Objection as to form and
4 vagueness and mischaracterizes the document.

5 A I understand this table to be the number
6 of times NCIC was queried.

7 Q And every year the NCIC is queried
8 billions of times. Right?

9 A Yes.

10 Q Some amount of those billions relates to
11 police officers doing traffic stops. Right?

12 A Yes.

13 Q Some amount of these queries relates to
14 federal government background checks and security
15 clearances. Correct?

16 A Yes.

17 Q Some of these transactions relate to
18 permits and licensing. Correct?

19 A Yes.

20 Q Do any of these NCIC transactions happen
21 automatically, like by algorithm?

22 MS. POWELL: Objection as to form and

1 vagueness.

2 A I don't know if any of them are done
3 automatically.

4 Q Does the FBI maintain any artificial
5 intelligence to -- that scans against or screens
6 against NCIC?

7 MS. POWELL: Objection as to form and
8 vagueness, and to the extent it calls for law
9 enforcement privileged information.

10 A Not that I'm aware of.

11 Q Is the FBI studying that possibility of
12 using artificial intelligence in the --

13 MS. POWELL: Instruct the witness not to
14 answer on the grounds of the deliberative process
15 privilege and potentially the law enforcement
16 privilege.

17 Q Has the FBI made any recommendations to
18 the Watchlisting Advisory Council regarding the
19 use of artificial intelligence in the watchlisting
20 system?

21 MS. POWELL: I would instruct the witness
22 not to answer on the grounds of the deliberative

1 process privilege and the law enforcement
2 privilege.

3 Q Is the FBI now using artificial
4 intelligence in any manner that regards the NCIC?

5 MS. POWELL: Objection as to form and
6 vagueness.

7 A Not to my knowledge.

8 Q Out of all these billions of NCIC
9 interactions, can FBI point to a single
10 terrorism-related arrest generated by these
11 potential encounters with somebody on the
12 watchlist?

13 MS. POWELL: Objection as to form and
14 vagueness and misleading. To the extent it calls
15 for law enforcement privileged information.

16 But I think the witness can answer.

17 A So I wouldn't expect an NCIC query to
18 lead to a terrorism-related arrest. But it
19 definitely -- but it has generated leads and
20 informed investigations, yes.

21 Q So the FBI doesn't expect the watchlist
22 to disrupt terrorism plots. Right?

1 MS. POWELL: Objection as to form and
2 vagueness and mischaracterizes prior testimony.

3 A So what I said was, you wouldn't expect
4 NCIC queries to disrupt terrorism plots.

5 Q Then why are you giving tens of thousands
6 of law enforcement agencies access to the KST file
7 via NCIC?

8 A So for at least two reasons. One is to
9 inform the investigating officer that they've
10 encountered someone on the -- in the KST file
11 someone, a watchlisted individual. So that's an
12 officer safety matter. You would want them to
13 know that.

14 And second, if that subject -- if that
15 individual is the subject of an FBI investigation
16 and they were encountered at a location that you
17 weren't expecting, that could inform the
18 investigation and generate investigative leads.

19 Q Do you, the FBI, track the number of
20 investigative leads that get generated by
21 watchlist encounters?

22 MS. POWELL: Objection as to form and

1 vagueness.

2 But you can answer as to whether or not
3 that's something generally or specifically
4 tracked, I think.

5 A No, not to my knowledge we don't.

6 Q I'm going to ask you to compare the
7 numbers, okay, so the first question is regarding
8 the 2012 NCIC transactions to the 2016 NCIC
9 transactions.

10 Do you see how in 2012 it's a little less
11 than 3.2 million -- I'm sorry, 3.2 billion.

12 Do you see how it's a little less than
13 3.2 billion?

14 A I do, yes.

15 Q And then in 2016 it's 5.23 billion.

16 Right?

17 A Right, yes.

18 Q Does the FBI have any explanation as to
19 why there was such a sharp increase from 2012 to
20 2016 in the number of NCIC transactions?

21 A No, I don't suspect we do. I don't -- I
22 don't know the reason behind that as I sit here.

1 Q You know, the FBI -- the terrorism --
2 it's a data set. Right? It's like a lot of
3 numbers, there's a lot of numbers involved?

4 MS. POWELL: Objection as to form and
5 vagueness and assumes facts not in evidence.

6 A What's a data set?

7 Q The terrorism screening data set is
8 actually a data set. Right? That's actually the
9 literal description of what it is. Right?

10 A It's a file, yes.

11 Q It's a data set. Is it a -- I don't know
12 what you mean when you said "file." So it's --

13 MS. POWELL: I'm not sure what you mean
14 when you say "data set," so maybe we should define
15 our terms a little.

16 Q I'm talking to the FBI, so I'm going to
17 ask the FBI, it used to be called the terrorism
18 screening database. Right?

19 A Right.

20 Q And then -- and then somebody decided to
21 change the name to the terrorism screening data
22 set. Right?

1 A Yes, that's right.

2 Q Why did you do that? Why did you change
3 the name from terrorism screening database to the
4 terrorism screening data set?

5 MS. POWELL: Objection. Assumes facts
6 not in evidence and beyond the scope of the
7 deposition.

8 A I honestly don't know why they decided to
9 change that name.

10 Q Was it purely aesthetic? Was it like a
11 rebranding exercise, or did it have some
12 substantive meaning?

13 MS. POWELL: Objection. Asked and
14 answered.

15 A I don't know.

16 Q So today you don't have any testimony at
17 all to offer as to why at some point the terrorism
18 screening database was renamed to the terrorism
19 screening data set. Right?

20 MS. POWELL: Objection. Outside the
21 scope of the deposition notice and asked and
22 answered.

1 A Right, I don't know why the name was
2 changed.

3 Q Was it the FBI's decision to change the
4 name?

5 MS. POWELL: Same objection.

6 A I don't know whose decision it was to
7 change the name.

8 Q Does the FBI think of its watchlist as a
9 data set?

10 MS. POWELL: Objection as to form and
11 vagueness. And -- objection as to form and
12 vagueness.

13 A It's a set of data, yes.

14 Q There's a lot of numerical attributes to
15 the government's use of the watchlist. Right?

16 A What does "numerical attributes" mean?

17 Q It's -- you know, because -- because
18 you're doing it over and over again, you're
19 looking at a lot of numbers.

20 The people that are administering the
21 watchlist look at a numerical presentation of the
22 watchlist. Right? They monitor its numerical

1 operation. Right?

2 MS. POWELL: Objection as to form and
3 vagueness, and assumes facts not in evidence.

4 A I guess I don't know what you mean by
5 "numerical." So, like, the watchlist has --
6 certainly has numbers in it, but it also has names
7 and other things that are not numbers. So I guess
8 I just don't understand the premise of the
9 question.

10 Q So let's just make sure I got this.

11 Does the FBI believe that sharing the KST
12 file with local law enforcement, does it believe
13 that it's effective to do so?

14 A Yes.

15 Q The basis for that belief is not any
16 specific incident. Right?

17 MS. POWELL: Objection as to form and
18 vagueness.

19 A No, the belief is not based on a specific
20 instance. No.

21 Q Are there any proof points that the FBI
22 can identify as examples of the FBI's decision to

1 include the KST file in NCIC as being effective?

2 MS. POWELL: Objection as to form and
3 vagueness, and assumes facts not in evidence.

4 A I don't know that there's any data like
5 that to point to for efficacy of including the KST
6 file in the NCIC database.

7 Q And today you can't identify any
8 particular instance that would fit that bill.

9 Right?

10 MS. POWELL: Objection as to vagueness.

11 What bill are we looking for?

12 MR. ABBAS: What we've been talking
13 about, which I think Mr. Langham understands.

14 A No; I think that there are -- so I think
15 that there are a number of data points. And I
16 think more to the point, it's important to share
17 the KST file with local law enforcement for the
18 two reasons that I described.

19 Q Tell me what those two reasons are again.

20 A So it's to notify local law enforcement
21 that they've encountered someone on the watchlist.
22 So that's an officer safety issue.

1 And then it's to then provide that
2 information back to the FBI so that they can
3 evaluate it for investigative value.

4 Q Are there any other ways that the FBI's
5 dissemination of the watchlist to tens of
6 thousands of law enforcement agencies, any other
7 mechanisms of effectiveness other than those two?

8 A The other measure would be it prevents
9 people on the watchlist who meet a certain
10 threshold from flying. So, yes.

11 Q Well, that's not disseminated to the
12 NCIC. Right?

13 A Oh, no.

14 Q We'll get to that later. I'm just
15 talking about the dissemination to the NCIC.

16 The airplanes -- the airplane companies
17 don't get the NCIC. Right?

18 A Not to my knowledge, no.

19 Q So let's set that to the side for the
20 moment. And I'm just talking about the NCIC
21 dissemination of the watchlist. Okay? And so you
22 gave me two reasons that the FBI has to believe

1 that its dissemination of the watchlist via NCIC
2 is effective. It's two reasons.

3 Is that right, two ways?

4 A I wouldn't say two reasons as to why it's
5 effective. What I would say is two reasons why
6 it's important. It's important that law
7 enforcement officers who encounter a known or
8 suspected terrorist know that they've encountered
9 that. And that's how they would know that, like
10 through this mechanism. So that's -- that's
11 important.

12 And then it's important for FBI
13 investigators to know if an FBI subject is
14 encountered somewhere that otherwise doesn't fit
15 with the investigation.

16 Those are -- so again, I'm not speaking
17 so much to efficacy as I am importance. Those are
18 important things for each set, each group to know.

19 Q We're going to drop down --

20 A And this is the way that this happens,
21 this is the mechanism that it happens. And so it
22 creates, as you said, a common operation --

1 operating picture between local law enforcement
2 and federal law enforcement.

3 Q You know, I think that when local law
4 enforcement get a return as a potential match to
5 the KST file, that they have absolutely no idea
6 what that means because the FBI has never told
7 them about it. And I want to see if you've ever
8 encountered that challenge that maybe the FBI has,
9 that of the tens of thousands of local law
10 enforcement agencies in the country, that there's
11 an uneven understanding of what the terrorist
12 watchlist is.

13 Is that accurate?

14 MS. POWELL: Objection as to form and
15 vagueness.

16 The witness can answer if he knows.

17 A So I don't know about the unevenness of
18 the knowledge of that. But what I will say is
19 that I am aware of investigative leads that have
20 been generated through local law enforcement of
21 encounters.

22 Q Yeah, I am, too. I think we have a guy

1 here in the case that y'all sent forward some
2 inaccurate information to a local prosecutor
3 about.

4 Out of these billions -- so I just want
5 to understand what these billions of NCIC
6 transactions reflect.

7 These -- each of these billions of NCIC
8 interactions -- transactions reflects some entity
9 that has access to NCIC screening against, among
10 other things, the terrorist watchlist. Right?

11 MS. POWELL: Objection as to form and
12 vagueness.

13 A I guess the question would be what do you
14 mean, "screening against"? So I view it as
15 querying. So you have identifiers and then you
16 query NCIC.

17 Q You know, like the screener term is like
18 a watchlist community term that -- y'all have --
19 that's terminology that y'all use, "screeners."

20 Right?

21 MS. POWELL: Objection. Assumes facts
22 not in evidence, to the extent you are asking

1 about NCIC specifically.

2 Q "Screeners," you use that term in the
3 watchlist community?

4 A In this context we're not talking about
5 screeners querying NCIC. We're talking about law
6 enforcement or other criminal justice agencies
7 querying NCIC. It's a defined query. It's not --
8 like screening I think of more broadly.

9 Q Certainly in the watchlist literature
10 that I've read in your documents, y'all think of
11 law enforcement using NCIC as screeners.

12 The screeners are the people that have to
13 call the terrorism screening center, right, to
14 confirm whether or not there's a match.

15 Is that right?

16 MS. POWELL: Objection as to form and
17 vagueness, and to the extent it calls for law
18 enforcement privileged information.

19 But you can try to answer the question.

20 A I don't know that -- I don't know if
21 they're called screeners or ...

22 Q Does the FBI have any explanation for why

1 in 2016 there was 5.23 billion NCIC transactions
2 and one year later there's 20 percent less,
3 there's 4.1 billion?

4 MS. POWELL: Objection as to form and
5 vagueness and outside the scope of the deposition
6 notice.

7 A I don't know why the number goes up and
8 down over time. I don't know the reasons behind
9 that.

10 Q You know, the volume numbers that we've
11 been looking at all have these 2016, 2017 peaks.

12 A Uh-huh.

13 Q I'm really surprised the FBI hasn't --
14 doesn't assess the numbers it keeps about the
15 operation of the watchlist. There's no -- there's
16 no kind of reflection on what these numbers mean?

17 MS. POWELL: Objection as to form and
18 vagueness and outside the scope of the FBI's
19 deposition notice.

20 A And again, I think, you know, there's an
21 over emphasis on watchlist here.

22 So we would definitely look at increases

1 or decreases in investigations, like that's,
2 again, more relevant. I don't know that these --
3 that these increases and decreases over time are
4 relevant.

5 Q You know, it's just, I would imagine,
6 doing something 3.1 billion times is a lot
7 different than doing something 5.23 billion times.

8 Am I wrong to think that?

9 MS. POWELL: Objection as to form and
10 vagueness and outside the scope of the deposition
11 notice.

12 A But it's not the FBI querying NCIC 2
13 billion more times.

14 Q Right. So it's somebody is querying the
15 NCIC 2 billion more times. Right?

16 A It's -- yeah, people with access to NCIC,
17 with authorization to use NCIC, querying NCIC
18 more, more frequently, yes.

19 Q Yeah. And you said -- you said that the
20 FBI maintains -- the NCIC access is tightly
21 controlled. Right?

22 A That's right.

1 Q It seems like that characterization that
2 NCIC access is tightly controlled is inconsistent
3 with not knowing why there were 2 billion more
4 NCIC transactions in 2016 than there were in 2012.

5 Right?

6 MS. POWELL: Objection. Argumentative.

7 Q I mean, reconcile that for me.

8 How is it that you have no explanation
9 for why there's 2 billion more NCIC transactions
10 in 2016 than there was in 2012, but you're saying
11 that NCIC is tightly controlled?

12 MS. POWELL: Objection as to form and
13 vagueness, and outside the scope of the deposition
14 notice.

15 A I said access to NCIC is tightly
16 controlled and it's subject to audits, yes.

17 MS. POWELL: We could use a personal
18 break when you get to a good point. I'm not going
19 to try to stop you right this second.

20 MR. ABBAS: Please. You're doing me a
21 favor. Let's take ten minutes.

22 (A recess was taken.)

1 MR. ABBAS: Can we project the 2023 rog
2 responses. I think that was initially going to be
3 Exhibit 8. Let's make that Exhibit 9.

4 (FBI Exhibit 9 marked for identification
5 and is attached to the transcript.)

6 BY MR. ABBAS:

7 Q So Exhibit 9 is the responses to the 2023
8 responses.

9 So take a look at that first
10 interrogatory. I'm sorry, if you scroll down to
11 the second page, it's called TSC Interrogatory
12 Number 4. One page down from where you are.
13 Yeah. I'm going to ask you just to review that
14 interrogatory, and then I'm going to ask you a few
15 questions about it.

16 A Okay.

17 Q The FBI knows how many encounters there
18 have been on -- involving people with the
19 watchlist status. Right?

20 MS. POWELL: Objection as to form and
21 vagueness and assumes facts not in evidence.

22 Are we talking about FBI encounters or

1 others?

2 MR. ABBAS: All encounters.

3 Q The FBI -- does the FBI have the total
4 number of encounters involving people on the
5 watchlist?

6 MS. POWELL: Objection as to form and
7 vagueness.

8 But you can answer as to whether or not
9 you have that information.

10 A I don't know that information.

11 Q I understand you might not know the
12 number of encounters, but do you know that the FBI
13 has that information?

14 MS. POWELL: Objection as to form and
15 vagueness. And clarifying that he's testifying to
16 the extent he knows about FBI exclusive of TSC.

17 A So I don't know that we have that number.
18 We could. I don't know.

19 Q It just seems like a very important
20 number, the number of encounters that the
21 government's use of the watchlist generates.

22 Is it viewed by the FBI as an important

1 number, the encounter number?

2 MS. POWELL: Objection as to form and
3 vagueness. And to the extent it calls for law
4 enforcement privileged information.

5 A So I don't know -- I don't think of it as
6 the number is important. I think certain
7 encounters, the results of that encounter are
8 important. I don't know that the number of
9 encounters is important.

10 Q Isn't that why the FBI disseminates the
11 watchlist so widely, to make it more likely that
12 people on the watchlist will be encountered?

13 MS. POWELL: Objection as to form and
14 vagueness and mischaracterizes prior testimony.

15 A As I said, my understanding -- the reason
16 it's important to disseminate the watchlist so
17 widely is to inform local law enforcement and
18 other agencies when they've encountered someone on
19 the watchlist, and so that the results of that
20 encounter, if the subject -- if the individual is
21 the subject of an FBI investigation, comes back to
22 the FBI and could lead -- could inform the

1 investigations.

2 Q There's an officer safety issue. Right?

3 A Potentially, yes.

4 Q Does the FBI view people on the watchlist
5 as more dangerous than people not on the
6 watchlist?

7 MS. POWELL: Objection as to form and
8 vagueness.

9 A Sometimes, yes.

10 Q That's the idea of putting people on the
11 watchlist, you think that they might be dangerous.
12 Right?

13 MS. POWELL: Objection as to form and
14 vagueness.

15 A The reason they're on the watchlist is
16 because they're known or suspected terrorists, and
17 so they might be dangerous.

18 Q Can you point to a single incident
19 involving somebody on the watchlist where the fact
20 that their watchlist status was disclosed to local
21 law enforcement assisted that officer or that
22 department in protecting themselves from the

1 listee?

2 MS. POWELL: Objection as to form and
3 vagueness and misleading.

4 A I don't know of any specific instance.

5 Q Are you aware of NCIC -- are you aware of
6 any law enforcement agencies that use automated
7 license plate readers to screen vehicles against
8 the watchlist?

9 MS. POWELL: Objection as to form and
10 vagueness, and to the extent it calls for law
11 enforcement privileged information.

12 A I don't know of any circumstances like
13 that.

14 Q Are you aware of any jurisdictions that
15 have, for example, used the watchlist to decide
16 who is and who isn't eligible to purchase
17 firearms?

18 MS. POWELL: Objection as to form and
19 vagueness.

20 You can answer to the extent you know.

21 A I don't know of any instances where
22 status on the watchlist prevented someone from

1 purchasing a firearm.

2 Q Do you know New Jersey has a law that
3 says that people on the No Fly List can't purchase
4 firearms? Have you ever heard of that?

5 MS. POWELL: Objection as to form and
6 vagueness, and outside the scope.

7 A I have not heard that.

8 Q There is law enforcement agencies in New
9 Jersey that receive the watchlist. Right? I'm
10 sorry, let me make that a little more specific.

11 The FBI provides watchlist access to New
12 Jersey law enforcement agencies via the NCIC.

13 Correct?

14 A Correct.

15 Q Does the FBI know whether or not law
16 enforcement agencies in New Jersey have used their
17 NCIC access to deny people gun purchases in
18 accordance with New Jersey state law because of
19 their watchlist status?

20 MS. POWELL: Objection as to form and
21 vagueness, and foundation.

22 A I don't know of instances where they've

1 use it had to enforce state laws.

2 Q Has FBI ever looked into it?

3 MS. POWELL: Objection as to form and
4 vagueness and foundation.

5 A Not to my knowledge.

6 MR. ABBAS: Let's go to the next page,
7 and let's look at the next -- I'm sorry, one more
8 page. Page 4 of the PDF. Yeah. Right there.
9 That's perfect. Okay.

10 Q I want you to read Interrogatory Number
11 5, and then I'm going to ask you a few questions
12 about that.

13 Are you done reviewing that?

14 A Yes, sir.

15 Q Does the FBI know how many persons have
16 committed acts of terrorism inside the United
17 States in -- since -- I'm sorry, let's start
18 again.

19 Does the FBI keep track of the number of
20 people that have committed acts of terrorism
21 inside the United States?

22 MS. POWELL: Objection as to form and

1 vagueness.

2 But I think you can answer the question.

3 A That is tracked, yes.

4 Q And that tracks it for each year. Right?

5 MS. POWELL: Objection as to form and
6 vagueness and foundation.

7 A I don't know if we track it year by year,
8 but that number is tracked for sure.

9 Q Does the FBI -- certainly the people that
10 committed acts of terrorism, the idea would be to
11 list them before they've committed the act of
12 terrorism on the watchlist. Right? That would be
13 kind of the watchlist at its best?

14 MS. POWELL: Objection as to form.
15 Vagueness, and assumes facts not in evidence.
16 Misleading.

17 A So the goal is to stop, prevent an act of
18 terrorism. That's the FBI's Number 1 objective,
19 Number 1 priority. So, yes, that is our
20 objective.

21 But again, and the watchlist is an
22 important tool in that, but the watchlist in and

1 of itself is not likely to prevent a terrorist
2 attack.

3 Let me say that again. So I think the
4 goal of the watchlist --

5 Q I have another question.

6 MS. POWELL: You did cut him off, so
7 there is a lack of clarity in his answer there.
8 But you can go ahead and move on, if you want.

9 MR. ABBAS: Yeah, I'll -- let me ask
10 another question.

11 THE WITNESS: All right.

12 Q Has the FBI assessed whether the people
13 committing acts of terrorism in the United States
14 are or are not on the watchlist at the time they
15 commit their acts of terrorism?

16 MS. POWELL: Objection as to form and
17 vagueness.

18 I'm going to remind the witness not to
19 reveal the watchlist status of specific
20 individuals in general, but you can answer as to
21 whether or not that is something the FBI looks
22 into.

1 A So when an act of terrorism takes place,
2 typically a comprehensive review is done, and
3 looking at an individual's watchlist status I'm
4 sure is part of that.

5 Q Every time somebody commits an act of
6 terrorism does the FBI conclude that the person
7 wasn't on the watchlist at the time they committed
8 their act of terrorism?

9 MS. POWELL: Objection as to form and
10 vagueness.

11 Is the question whether FBI looks at that
12 or whether they're never on the watchlist? I
13 didn't quite follow.

14 MR. ABBAS: Yeah, well, okay, I'll do it
15 in two parts. I think the first part we got, but
16 let me back up and make sure we got it.

17 Q The FBI -- after somebody commits or
18 tries to commit an act of terrorism inside the
19 United States, the FBI determines whether that
20 person is or -- I'm sorry, whether that person was
21 or was not on the watchlist at the time they
22 committed their act of terrorism. Correct?

1 MS. POWELL: Objection as to form and
2 foundation. It assumes facts not in evidence.

3 A So if an act of terrorism occurs in the
4 U.S., or when an act of terrorism occurs in the
5 U.S., a review is done, and watchlisting status is
6 almost certainly looked at as part of that, yes.

7 Q And has it been the case that after these
8 despicable crimes take place, that the FBI has
9 determined that the person was not on the list at
10 the time they committed their crime?

11 MS. POWELL: Objection as to vagueness.
12 Is the question of whether that has ever been the
13 case or whether that is always the case?

14 Q Well, start the easy. It hasn't always
15 been the case that people who perpetrate acts of
16 terrorism inside the United States have in each
17 case been on the watchlist when they've committed
18 their crime. Right?

19 MS. POWELL: Objection as to form,
20 foundation, vagueness, and misleading.

21 Also instruct the witness not to answer
22 on the grounds of the law enforcement privilege.

1 Q It's never happened where a person who
2 has committed an act of terrorism inside the
3 United States was on the watchlist at the time
4 they committed their act of terrorism. Right?

5 MS. POWELL: Objection to form and
6 foundation and misleading.

7 And instruct the witness not to answer on
8 the grounds of the law enforcement privilege and
9 SSI.

10 MR. ABBAS: Tell me about the SSI. How
11 is that SSI if I'm asking the FBI?

12 MS. POWELL: To the extent you're asking
13 about specific watchlist status on the TSA
14 subsets, I would assert SSI over that. If you're
15 just asking about watchlist status alone, that
16 would be law enforcement privilege.

17 FBI can obviously possess SSI.

18 Q Has it ever happened in the history of
19 the watchlist that a person who committed an act
20 of terrorism inside the United States was on the
21 watchlist when they committed an act of terrorism
22 inside the United States?

1 MS. POWELL: Objection.

2 Instruct the witness not to answer on
3 grounds of the law enforcement privilege. We
4 might want to take a break at some point so I can
5 confirm that they can't even give a yes-or-no
6 answer there.

7 MR. ABBAS: Yeah, we can do that now.

8 MS. POWELL: This shouldn't take very
9 long. Okay. Just give me a minute here.

10 MR. ABBAS: Okay.

11 (A recess was taken.)

12 MS. POWELL: We have a slightly further
13 answer we are willing to give. Do you want to ask
14 the question again?

15 MR. ABBAS: I just don't know what the --
16 what --

17 MS. POWELL: Sorry. As I recall it, the
18 question was, has there ever been an instance
19 where someone who committed a terroristic attack
20 was on the watchlist at the time.

21 And I think you can answer that question
22 yes, no, or I don't know without -- without

1 running afoul of the privilege.

2 A So the answer is yes.

3 MR. ABBAS: What was the question you
4 just said, Amy? Can you say it one more time.

5 MS. POWELL: Has there ever been an
6 instance where someone who committed a terrorist
7 attack in the U.S. was on the watchlist at the
8 time.

9 And the answer to that, as I understood
10 from it the witness, was yes.

11 Q And has that person's status on the
12 watchlist ever prevented the act of terrorism from
13 happening?

14 MS. POWELL: Objection as to form and
15 vagueness. And by "that person," are you
16 referring to the specific person or persons we
17 were mentioning before or in general?

18 Q In general.

19 MS. POWELL: Okay. So if the question is
20 has someone's status ever prevented a terrorist
21 attack, I'm going to object to the extent it calls
22 for the law enforcement privilege and then object

1 on form and vagueness grounds.

2 But you can answer.

3 A I'm not aware of it preventing a specific
4 terrorist attack.

5 Q Do you have a number of times that a
6 person has committed an act of terrorism while on
7 the watchlist in mind?

8 MS. POWELL: Objection. To the extent it
9 calls for law enforcement privileged information,
10 I don't think we can give him a specific number.

11 Do you know a specific number?

12 THE WITNESS: I don't.

13 Q Do you have a specific example in mind of
14 at least one instance of a person being on the
15 watchlist at the time they have committed an act
16 of terrorism inside the United States?

17 MS. POWELL: Objection to the fact it
18 calls for law enforcement privileged information.

19 Actually, I'm going to instruct the
20 witness not to provide more information than we
21 have already.

22 Q You can't tell me whether you have one

1 specific -- I just want to know if it's specific
2 or not, I guess.

3 Like, is it -- do you just have a general
4 sense that it's happened at least once that
5 somebody's been on the watchlist while they have
6 committed an act of terrorism, or do you have some
7 particular person in mind?

8 MS. POWELL: Witness cannot provide more
9 information than we have already. If he can
10 clarify his previous answer he can, but without
11 providing any additional information that would
12 run afoul of the law enforcement privilege.

13 A I don't know how I would clarify that.

14 Q The reason I'm asking is because, you
15 know, we're certainly going to ask a court to
16 weigh in about whether you should be able to
17 withhold this information from me. And so I'm
18 trying to understand what is being withheld.

19 Okay?

20 MS. POWELL: I'm asserting the privilege
21 over any information that could be used to
22 reverse-engineer the undisclosed watchlist status

1 of particular individuals, if that is helpful.

2 MR. ABBAS: Okay. And I'm just looking
3 for a number, that's what I'm looking for. I'm
4 looking for a number, and that's it.

5 MS. POWELL: And I think -- so that
6 number is certainly one of the things I would
7 assert over on grounds it could be used to
8 reverse-engineer the status of particular
9 individuals, I think.

10 MR. ABBAS: How can just a number
11 reverse-engineer the status of individuals?

12 MS. POWELL: I am confident in my law
13 enforcement privilege assertion here.

14 MR. ABBAS: Okay. I understand. I don't
15 understand your assertion, that's why I'm asking
16 some questions around it. So not trying to be
17 difficult, but just trying to be thorough.

18 MS. POWELL: Not mutually exclusive, you
19 know.

20 MR. ABBAS: Yeah, yeah, that's true.

21 Q Does the FBI view it as a failure when
22 somebody that commits an act of terrorism inside

1 the United States is not on the watchlist when
2 they do so?

3 MS. POWELL: Objection as to form and
4 vagueness and foundation.

5 But I think the witness can answer.

6 A So that's not -- we don't look at whether
7 or not a terrorist attack occurred and whether or
8 not they were on the watchlist as necessarily a
9 failure.

10 One of the things that we do look at is
11 was that individual ever brought to our attention,
12 were we aware of that particular individual at the
13 time of the attack; not necessarily with regard to
14 watchlisting status.

15 Q Are you familiar with the underwear
16 bomber? Do you know about the underwear bomber?

17 A I am familiar with them, yeah.

18 Q My understanding is that the underwear
19 bomber, his ability to board a plane after his own
20 father begged the government to deny him a visa or
21 put him on the no fly list was considered an
22 inadequacy of the watchlisting community.

1 Is that your general sense, that the
2 underwear bomber incident reflected a problem in
3 the government's watchlisting processes?

4 MS. POWELL: Objection as to form and
5 foundation and misleading, and to the extent it
6 called for law enforcement privileged information.

7 But I think the witness can give an
8 answer.

9 A So I think a review of that incident and
10 the subject's watchlisting status did reveal flaws
11 in the process that were highlighted, and a number
12 of which I think have been since corrected.

13 Q Has one of the changes that the FBI made
14 to the watchlisting process to just watchlist a
15 lot more people?

16 MS. POWELL: Objection as to form,
17 foundation, and misleading. And to the extent it
18 calls for law enforcement privileged information.

19 I think the witness can give a general
20 answer.

21 A No. My understanding is the
22 recommendation wasn't simply to watchlist a lot

1 more people.

2 Q A lot more people were watchlisted in the
3 years after the underwear bomber. Right?

4 MS. POWELL: Objection as to form and
5 foundation, and to the extent it calls for law
6 enforcement privileged information.

7 But I think the witness can answer, if he
8 knows.

9 A I don't know. I think we were looking at
10 those numbers earlier. I just don't recall them.

11 Q You remember we kept on talking about
12 2012 to 2017. And in each case between 2012 and
13 2017 there was a huge growth in whatever
14 watchlisting activity we're talking about?

15 A Yeah.

16 MS. POWELL: Objection as to form and
17 foundation. If you want him to verify the
18 numbers, you can put them back up.

19 A But that attack occurred in 2009, I
20 believe, so not 2012.

21 Q Tell me what was the problem that the
22 underwear bomber incident highlighted that the FBI

1 did something about.

2 MS. POWELL: Objection as to form and
3 foundation, and to the extent it calls for law
4 enforcement privileged information.

5 But there's public information -- and to
6 the extent it calls for SSI. But there is public
7 information the witness can give.

8 A So my understanding is that the -- at
9 issue was that various parts of the U.S.
10 government had pieces of information that if they
11 would have been all brought together would have
12 led to Abdulmutallab being watchlisted. That
13 didn't occur, he wasn't watchlisted, and as a
14 result he traveled.

15 The review that I'm familiar with wasn't
16 so much focused on things the FBI could do
17 differently, but more of a whole of government
18 changes that could be made to make the watchlist
19 more effective.

20 Q Is it true that every agency is required
21 to provide -- to distill its terrorism information
22 into nominations to the watchlist?

1 MS. POWELL: Objection, to the extent
2 you're calling for a legal conclusion. Which I
3 don't know if you are, to be clear. An objection
4 as to vagueness.

5 A Did you say distill?

6 Q Yeah. You know the watchlist is just a
7 list. Right?

8 A Right.

9 Q It's a list of names. Okay? And so the
10 list of names reflects the terrorist information
11 that the agencies have. Right?

12 MS. POWELL: Objection as to form and
13 foundation and vagueness.

14 A So the TSDS doesn't have the underlying
15 intelligence and derogatory information.

16 Q Yeah. I understand that.

17 You rely on -- the FBI and the terrorism
18 security center rely on other agencies and their
19 various holdings to sift through those holdings to
20 determine who should be nominated to the
21 watchlist. Right?

22 MS. POWELL: Objection as to form and

1 foundation and vagueness, and to the extent it
2 calls for law enforcement privileged information.

3 I think the witness can answer as to the
4 FBI's process.

5 THE WITNESS: Yeah, I think the question
6 was about other agencies, though. Right?

7 MS. POWELL: Sorry. Maybe I
8 misunderstood.

9 A The question was do other agencies
10 nominate to the watchlist? Was that the question?

11 Q No. It's part of the question. Let me
12 try again. And as we're getting later in the day,
13 Mr. Langham, the quality of my questions are going
14 to decrease. And so I apologize for that. It's
15 getting a little --

16 MS. POWELL: Counsel, my objections
17 quality are decreasing as well. We can all just
18 decline together here.

19 Q Yeah, so I apologize for that. It's my
20 responsibility to ask you clear questions, and I'm
21 struggling to do that a little bit now. So let me
22 try again.

1 And this is just a really general
2 question. A general question about how -- the
3 idea behind the watchlist.

4 The FBI doesn't have access to all of the
5 information in the federal government. Right?

6 A No. That's true.

7 Q But the FBI expects all agencies to
8 review the information that they have and
9 determine whether any of that information is
10 terrorist information. Right?

11 MS. POWELL: Objection as to form and
12 foundation, and to the extent you're calling for a
13 legal conclusion.

14 A So I don't know that there is a
15 requirement for them to sort their information as
16 being terrorist-related or not.

17 Q Isn't that what the FBI expects agencies
18 to do in nominating people to the watchlist, go
19 through the information they have and determine
20 whether that information warrants a person's
21 placement on the watchlist?

22 MS. POWELL: Objection as outside the

1 scope of the FBI deposition topics. You're about
2 FBI nominations.

3 Q Go ahead.

4 A So if another agency were to encounter an
5 individual that would meet the standards for
6 watchlisting, I think the expectation would be
7 that they submit that individual for watchlisting.

8 Q And so there is an expectation that the
9 FBI has that agencies are using the information
10 that they possess to determine who to nominate to
11 the watchlist. Correct?

12 MS. POWELL: Objection as to form and
13 foundation and outside the scope of the deposition
14 notice.

15 MR. ABBAS: This is like the basic --
16 this is like a basic fact of the watchlist, that
17 the agencies are working together to go through
18 their information and decide who would be listed.

19 And so it's about the nomination process,
20 it's about the FBI's role in the nomination
21 process. And so I'm unclear as to why this is
22 outside the topics.

1 MS. POWELL: Sure. He is not testifying
2 on behalf of TSC today at all, only as to FBI.
3 And the only related FBI topic here is FBI
4 nominations, which you're not asking him about.
5 You're asking him about other agencies'
6 nominations, as far as I can tell. And that is
7 not something he is expected to have any
8 information about today. If he does, you know,
9 I'm not going to tell him to not give you what
10 information he has. But he's certainly not
11 expected to have that information today.

12 A No. Like I said, I think the expectation
13 would be if another government agency has
14 information that would warrant watchlisting of an
15 individual, that they submit that individual for
16 watchlisting.

17 Q And the underwear bomber incident, some
18 agency did not, even though it had enough
19 information to place the underwear bomber on the
20 watchlist, it did not submit a nomination to --

21 MS. POWELL: Objection.

22 Q -- the watchlist. Right?

1 MS. POWELL: Objection as to form and
2 foundation and outside the scope of the deposition
3 notice, and mischaracterizes prior testimony.

4 A I don't think it was a matter that, as I
5 understand it, of one agency having enough
6 information on its own to watchlist Abdulmutallab.

7 My understanding is that if you would
8 have taken the information that various agencies
9 had with regard to him and put it together, that
10 cumulatively that would have -- he would have
11 warranted watchlisting.

12 But that culmination of information,
13 bringing it together and then submitting, did not
14 occur.

15 So I don't recall it as a failure of any
16 one government agency to not submit him for
17 watchlisting.

18 Q I mean -- okay. Let's go to the actual
19 document.

20 MR. ABBAS: We're going to upload -- are
21 we at Exhibit 10?

22 (FBI Exhibit 10 marked for identification)

1 and is attached to the transcript.)

2 MR. ABBAS: Exhibit 10 was previously
3 Exhibit E in some other deposition. So I don't
4 know if you're able to paste over it or ...

5 (A discussion was held off the record.)

6 Q All right. If we can go all the way to
7 the top. This document is the subject Summary of
8 White House Review, December 25th, 2009, Attempted
9 Terrorist Attack.

10 Mr. Langham, are you familiar with the
11 White House review of the underwear bomber attack?

12 A Yes, I am familiar with it.

13 Q I want to go down to the second page,
14 which is the Findings page.

15 You see how the Findings, there is three
16 bullet points and then there's another four bullet
17 points? If you could zoom out just a little bit
18 so everyone can see the -- okay. I want you to
19 read from, Findings until the seventh bullet
20 point. You don't have to read, Failure to connect
21 the dots. We'll talk about that later.

22 A Okay. Finished.

1 Q Do you see in that first bullet point
2 where it says, "A failure of intelligence
3 analysis"?

4 A I see it, yes.

5 Q That's the FBI's conclusion, that the
6 underwear bomber reflected a failure of
7 intelligence analysis?

8 MS. POWELL: Objection as to form and
9 foundation.

10 This is a White House document. Yeah?

11 MR. ABBAS: I'm asking if the FBI shares
12 the White House's conclusion that the underwear
13 bomber incident reflected a failure of
14 intelligence analysis.

15 MS. POWELL: Sorry, I thought you were
16 characterizing the document.

17 A So as far as I know, the FBI agrees with
18 this conclusion.

19 Q And that failure of intelligence analysis
20 wasn't about lacking information; it about putting
21 the information together. Right?

22 A Yes, that's my understanding. That's

1 what it says here.

2 Q Does the FBI use artificial intelligence
3 to fuse data together to address the intelligence
4 analysis failure reflected in this White House
5 review?

6 MS. POWELL: Objection as to vagueness.
7 Form, foundation, to the extent it calls for law
8 enforcement privilege or state secrets privileged
9 information.

10 But I suspect the witness can answer.

11 A To my knowledge, we don't use artificial
12 intelligence for that purpose.

13 Q Do you use algorithms to fuse information
14 in the FBI's holdings to assist with watchlisting?

15 MS. POWELL: Objection as to form,
16 foundation, and vagueness, and to the extent it
17 calls for law enforcement privileged information.

18 I think the witness can answer if he
19 knows.

20 A I'm not familiar with the use of
21 algorithms for that use.

22 Q Do you see the third bullet point where

1 it talks about shortcomings of the watchlisting
2 system?

3 A I do see it, yes.

4 Q What steps did the FBI take to address
5 the shortcomings of the watchlisting system that
6 the underwear bomber identified?

7 MS. POWELL: Objection as to form and
8 foundation and to the extent that it calls for law
9 enforcement privileged information.

10 The witness can answer if he knows at a
11 general level.

12 A So I don't know what specific changes
13 were made by the FBI as a result of this.

14 Q Do you know whether or not there were any
15 specific changes?

16 MS. POWELL: Objection as to form and
17 foundation.

18 Are you asking specifically about the
19 FBI?

20 MR. ABBAS: Yeah. I'm asking whether the
21 FBI is aware of any specific changes that it made
22 or that were made to the watchlisting system to

1 address the shortcomings of the watchlisting
2 system identified by this White House review of
3 the underwear bomber incident.

4 MS. POWELL: I'm objecting to the scope
5 of the question, to the extent you're asking about
6 changes made by other agencies, to the extent it
7 calls for law enforcement privileged information,
8 and to the extent it calls for SSI.

9 A So I'm not aware of specific changes the
10 FBI made.

11 The one thing I would point out here is
12 it does talk about the CT community and failures.
13 And I'm not trying to abdicate responsibility, but
14 I'm not aware of the FBI having a role in any of
15 these specific steps or failures.

16 Q Whose fault was it?

17 MS. POWELL: Objection as to form and
18 foundation, to the extent it calls for law
19 enforcement privileged information.

20 And to the extent it calls out the
21 intelligence community, the specific agencies
22 involved may also have various statutory

1 protections like ODNI statutory protections or the
2 CIA Act and things like that.

3 So I would instruct the witness not to
4 answer questions about sort of other parts of the
5 intelligence community that have those
6 protections.

7 I don't know if there is a more general
8 answer you can give. Do you know?

9 THE WITNESS: Whose fault it was?

10 MS. POWELL: Yeah.

11 A Again, like I don't -- my understanding
12 is it's no specific agency's fault, but it was the
13 inability to kind of, as it says, fuse this, all
14 of the information, into a cohesive story.

15 Q Let's go to the bottom of the next page.
16 We're on Page 2. If you could go to Page 3. And
17 do you see those underlined sentences? That's
18 where we're going to start. And then we're going
19 to continue through the three bullet points. The
20 third bullet point is on the next page. Yeah. A
21 little bit lower. Perfect. A little bit lower.
22 Sorry. If you can. Great. Okay.

1 Could you read starting with the
2 underlined sentences and through to the three
3 bullet points?

4 A Sure. Okay.

5 Q So I want to ask about that second bullet
6 point, where five weeks before the attack the
7 underwear bomber's father met with U.S. Embassy
8 officials in Nigeria.

9 Do you see that?

10 A I do see that, yes.

11 Q It seems like an exceptional circumstance
12 where a father is meeting with the U.S. government
13 to tell U.S. government officials that his son is
14 under the influence of extremists.

15 Is that an exceptional thing or something
16 that happens all the time?

17 MS. POWELL: Objection as to form and
18 foundation. Outside the scope of the deposition
19 notice, and to the extent it calls for law
20 enforcement privileged information.

21 But I think the witness can answer as to
22 how he would characterize it, if he can.

1 A So this is significant, but there are
2 definitely I've been involved in instances where
3 family members have brought concerns about someone
4 in their family coming under the influence of
5 extremists.

6 But it has happened, yes.

7 Q It's something that FBI would take
8 extremely seriously when it happens. Right?

9 MS. POWELL: Objection as to form and
10 foundation, and to the extent it calls for law
11 enforcement privileged information.

12 But I think you can characterize it at
13 that level of generality, if you can.

14 A Yes, we would take those extremely
15 seriously.

16 Q In this case, for some reason, although
17 the underwear bomber's father met with U.S.
18 government officials about concerns that he had
19 about his son, do you know why that didn't lead to
20 his watchlisting?

21 MS. POWELL: Objection as to form and
22 foundation. Outside the scope of the deposition

1 notice, and to the extent it calls for law
2 enforcement privileged information.

3 I think the witness can answer as to, you
4 know, what's in the report without running afoul
5 of those privileges.

6 A Yeah, I don't know why that didn't lead
7 to watchlisting him. Although -- yeah, I don't
8 know why.

9 Q Is it because the government is adding
10 tens of thousands of people to the watchlist each
11 year, and so can't focus on individual things
12 because it's watchlisting so much?

13 MS. POWELL: Objection as to form and
14 foundation and misleading. And I think the
15 witness can nonetheless answer.

16 MR. ABBAS: I'll withdraw the question.

17 Q It seems to me to make your task at the
18 FBI so much more difficult that you're
19 watchlisting more than a hundred thousand people
20 each year, except for the last few years where
21 it's been 50,000, 70,000. It seems -- is that --
22 tell me if I'm right or wrong to think that.

1 MS. POWELL: Objection as to form and
2 foundation and vagueness.

3 A Wrong to think about it how?

4 Q So, you know, I'm -- you know, you all at
5 the FBI are trying to identify just a few -- thank
6 God there's only a few people that are committing
7 acts of terrorism. Right? It's not like
8 thousands and thousands of people inside the
9 United States are committing acts of terrorism
10 each year. It's just a few. Right?

11 MS. POWELL: Objection as to form and
12 foundation. And misleading.

13 A Yes, I would characterize it as more than
14 a few at any given time and less than thousands.

15 Yes.

16 Q Okay.

17 MS. POWELL: I'm sorry. And for the sake
18 of clarity, are we talking about the number of
19 people who commit terrorist attacks inside the
20 United States?

21 MR. ABBAS: Yeah. Yeah.

22 MS. POWELL: And that's what your answer

1 was about, the number of people who
2 committed terrorist attacks in --

3 A I thought you said were planning
4 terrorist attacks. But I guess if you could read
5 back the question or repeat it.

6 Q I'll say it again. And we'll talk about
7 planning separately from the commission of a
8 terrorism crime.

9 It's only a small number of people that
10 are committing acts of terrorism inside the United
11 States per calendar year. Right?

12 A That's correct, yes.

13 Q At the FBI, your counter-terrorism job is
14 very difficult because you don't know who is going
15 to end up being among the small group of people
16 that commit an act of terrorism inside the United
17 States. Correct?

18 MS. POWELL: Objection as to form and
19 vagueness.

20 But you can answer.

21 A It is difficult, yes.

22 Q My sense is that the FBI has confronted

1 that difficulty with brute numbers. We're going
2 to do just a lot, spread out the watchlist to a
3 lot of places because we're trying to catch
4 something very rare.

5 Is that right? Is that the mentality
6 behind the watchlist?

7 MS. POWELL: Objection as to form and
8 foundation. Misleading.

9 But you can try to answer.

10 A No, that's not the idea behind the
11 watchlist.

12 Q Then why do it, why add -- if there's
13 more than 1.8 million people on the watchlist.

14 Right?

15 Is that right?

16 A I forget the exact number.

17 Q Somewhere around there, around 2 million
18 people on the watchlist?

19 A I think it's less than that, less than 2
20 million.

21 Q Somewhere between one-and-a-half and 2
22 million people on the watchlist?

1 A I don't know the exact number. I don't
2 know like -- that number is escaping me. But a
3 lot of people are on the watchlist.

4 Q It's more than a million people on the
5 watchlist. Right?

6 A I don't know.

7 Q You don't know?

8 A I don't know right --

9 Q I'm sorry. Go ahead.

10 A No. Go ahead.

11 MS. POWELL: Gadeir, I think you have
12 that number in an exhibit that you have already
13 introduced. If you want to refresh his
14 recollection, you can.

15 MR. ABBAS: Yeah. No, I do have the
16 number. I'm just trying to establish a basic
17 ballpark of the number so I can discuss it with
18 the FBI's designee. And so the fact that he
19 doesn't --

20 MS. POWELL: He just told you he doesn't
21 remember. You can refresh his recollection if you
22 want, if you need the baseline for the discussion.

1 I'm just telling you. He told you he doesn't
2 remember.

3 MR. ABBAS: Okay.

4 MS. POWELL: Give him the actual number
5 if you want him to remember.

6 MR. ABBAS: I think I can live without
7 the number for the moment. I'll try to make do.

8 Q It's a lot of people. It's a lot of
9 people on the watchlist. Right? There's a lot, a
10 lot of people on the watchlist. Right?

11 A Yeah, I mean, "a lot" is a relative term.
12 Right? There's billions of people in the world,
13 you know. So you could argue that it's a lot, or
14 you could argue that it's not a lot.

15 Q I think it's the biggest secret list in
16 the world.

17 Do you have a sense of --

18 MS. POWELL: Objection as to form and
19 foundation. I think the Chinese government
20 probably has a bigger list somewhere.

21 MR. ABBAS: I can't remember who it was
22 at the terrorism screening center who said in 2013

1 that it's the only -- only watchlist of its kind
2 in the world. So I'm not coming up with this
3 stuff, you know, myself. I'm reading you guys
4 very closely.

5 Q Do you know, do you know how the U.S.
6 watchlist compares to the watchlists of foreign
7 governments?

8 MS. POWELL: Objection as to form and
9 foundation. And to the extent it calls for law
10 enforcement privilege or state secrets
11 information, which would include most foreign
12 government information that was shared
13 confidentially.

14 Do you know the answer to this question?

15 THE WITNESS: I don't know. No, I don't.

16 MS. POWELL: Okay.

17 Q What should have the U.S. Embassy
18 officers who met with underwear bomber's father
19 have done when the father informed them of the
20 concerns that he had about his son?

21 MS. POWELL: Objection as to form and
22 foundation, and objection as to outside the scope

1 of the FBI's deposition notice.

2 I think the witness can answer, if he
3 can.

4 A So I don't know what they did or did not
5 do with this, this specific information. It
6 should have been documented. And if there was --
7 if he -- if Abdulmutallab met, based on the
8 interview results and the specific facts in the
9 interview met the watchlisting standard, he should
10 have been submitted for watchlisting.

11 Q Do you know whether or not the Embassy
12 officials that met with the underwear bomber's
13 father determined whether the underwear bomber
14 qualified for inclusion on the watchlist?

15 MS. POWELL: Objection as to form and
16 foundation. Outside the scope of the FBI
17 deposition notice, which is definitely not about
18 what the Embassy officials do.

19 Q Let's go to the -- Exhibit 1 is the
20 deposition notice. Let's go to that just so we
21 can kind of be clear on where I'm -- and Page 3.

22 Do you see Page 10 -- Topic 10 the FBI's

1 understanding of the efficacy of the TSDS?

2 A I see that, yeah.

3 Q You understand by "efficacy," which we've
4 discussed at various points today, I'm trying to
5 figure out what the FBI itself thinks about the
6 effectiveness of the watchlist.

7 Do you understand that?

8 A I do.

9 MS. POWELL: I maintain that does not
10 reasonably include what State Department officials
11 should or should not have done in 2009 with
12 respect to a potential watchlist subject.

13 MR. ABBAS: You know, so the designee,
14 the FBI designee, testified that the underwear
15 bomber incident identified certain shortcomings of
16 the watchlisting system, and then testified that
17 those shortcomings were addressed in some way. He
18 said that.

19 So I'm figuring out in what way did the
20 FBI, if at all, did it address these shortcomings.
21 So I need some basic information about the
22 incident. And if he doesn't know or doesn't have

1 basic information about this defining event in the
2 watchlisting community, that's fine. That's an
3 answer, and we'll take that up in a different
4 forum.

5 MS. POWELL: We don't need to belabor the
6 point. I understand your position. I maintain
7 that the FBI deponent is not reasonably expected
8 to know about what a State Department official
9 should or should not have done just because he is
10 generally familiar with the review of the
11 Abdulmutallab matter.

12 Q At the FBI, you expect personnel from
13 other agencies to submit nominations when they
14 have sufficient information to warrant a person's
15 inclusion on the watchlist. Right?

16 MS. POWELL: Objection as to form,
17 foundation, and outside the scope in that you're
18 asking about other agencies' responsibilities not
19 with respect to FBI but with respect to TSC.

20 Q Go ahead.

21 A But I would expect if other agencies had
22 sufficient information to watchlist an individual,

1 that they would watchlist that individual.

2 Q In this case, the officials at the U.S.
3 Embassy did not meet that expectation. Right?

4 MS. POWELL: Objection as to form,
5 foundation, and outside the scope of the
6 deposition notice.

7 But you can answer.

8 A I don't know -- so part of the analysis
9 is that in hindsight Abdulmutallab's father's
10 interview, the facts presented in that interview,
11 coupled with the intelligence of an ongoing
12 Al-Qaeda and the Arabian peninsula plot, like
13 those things needed to be brought together to
14 watchlist him and not fly him. And those things
15 didn't happen. That's my reading of it.

16 But I do think that this brings up
17 like -- this shows why there should be a
18 watchlist. Right? And shows how this could have
19 been prevented, according to this report, if he
20 would have been properly watchlisted.

21 So I think it's interesting that
22 you're -- that this is a significant part of the

1 argument here.

2 Q Does the FBI know of any steps that
3 the -- that it or any other agencies took to
4 address the shortcomings identified by the
5 underwear bomber incident?

6 MS. POWELL: Objection to the extent the
7 question is outside the scope of the FBI's
8 deposition notice and to the extent it calls for
9 law enforcement privileged or SSI.

10 A But I don't know what specific steps we
11 took in light of that.

12 Q So let's go to the bottom -- I'm sorry,
13 let's go back to Exhibit 10. And go to the bottom
14 of Page 4. Okay. If you go just a little bit
15 further down just so we have the Failure to
16 Watchlist heading up. I want you to just review
17 the first paragraph under the Failure to Watchlist
18 heading, and I have a few questions for you.

19 MS. POWELL: And the witness can read as
20 much as he needs to to understand the context. I
21 leave that to you.

22 A Okay.

1 Q Okay.

2 A But I find the need to point out that
3 this sentence in the next paragraph says exactly
4 what I said, that the interview in and of itself
5 did not -- the results of that interview did not
6 meet the minimum derogatory standard to watchlist.
7 So it wasn't the failure -- I don't think it's
8 fair to say it was a failure of those Embassy
9 personnel, because that information again in and
10 of itself was not sufficient for watchlisting.

11 Q I'm more interested right now -- we'll
12 get to that, and I promise I do have specific
13 questions about that topic that you just raised
14 that we'll get to shortly. But I just want to
15 talk about the first paragraph.

16 Do you see in that first sentence where
17 it says, "The failure to include Mr. Abdulmutallab
18 in a watchlist is part of the overall systemic
19 failure"?

20 Do you see that?

21 A Yeah, I do.

22 Q That's broad language, a systemic failure

1 of the watchlist. Is that the FBI's conclusion as
2 well, that the failure to include the underwear
3 bomber on the watchlist reflected a systemic
4 failure?

5 MS. POWELL: Objection as to form and
6 foundation.

7 You can answer.

8 A So I think what "systemic" is meant to
9 capture here is that it was a failure in various
10 parts of the watchlisting community and the CT
11 community as it's described here. So "systemic"
12 means not so much that it was as much to
13 significance, as just that it involved -- the
14 failure involved various agencies.

15 Q What did the FBI or anybody else do to
16 address what this report calls a systemic failure?

17 MS. POWELL: Objection as to form,
18 foundation, and it exceeds the scope of the FBI
19 deposition notice. And asked and answered, I
20 think.

21 You can answer.

22 A So, I mean, again, I'm not sure what

1 steps were taken by the FBI. But it really -- it
2 doesn't highlight any FBI-specific failures. It
3 talks about NCTC, but not -- so I don't know that
4 any changes would need to have been made as a
5 result of this to FBI processes.

6 That being said, I don't know that there
7 weren't any made.

8 Q Today you can't identify any steps that
9 the FBI or any other agency took to address what
10 this White House review called a systemic failure
11 of the watchlist. Right?

12 MS. POWELL: Objection as to form,
13 foundation, exceeds the scope of the FBI
14 deposition notice, and to the extent it calls for
15 law enforcement privileged or SSI information.

16 But I think the witness can answer as to
17 his knowledge.

18 A I don't know of any FBI-specific steps
19 taken as a result of this.

20 Q Do you know of any steps any agency in
21 the watchlist community has taken to address the
22 systemic failure that this White House memo

1 discusses?

2 MS. POWELL: Objection because it exceeds
3 the scope of the deposition notice and any
4 reasonable expectation of what an FBI witness
5 would know here.

6 A I don't know.

7 Q Now --

8 MS. POWELL: Gadeir, when you wrap up
9 this document, maybe we could take a break?

10 MR. ABBAS: Sure.

11 MS. POWELL: Let's get to a stopping
12 point first.

13 MR. ABBAS: I think -- okay.

14 Q So now the second paragraph. The
15 paragraph that says "Hindsight."

16 A Yes.

17 Q Have you read it already?

18 A I have, yeah.

19 Q You have read it?

20 A Yeah.

21 Q A few questions about it.

22 Do you see, the sentence in the middle

1 that says, "Watchlist personnel had access to
2 additional derogatory information."

3 Do you see that?

4 A I do see that, yeah.

5 Q Now, do you know which watchlist
6 personnel this document is referring to?

7 MS. POWELL: Objection to the extent it
8 calls for law enforcement privileged information,
9 state secrets privileged information, or if it
10 calls for information in the possession of
11 agencies with special statutory protections like
12 ODNI or CIA, I would instruct the witness not to
13 answer to them as well.

14 I think he can answer as to if he knows
15 what agencies were involved.

16 A I don't know which personnel, which
17 watchlist personnel specifically had access.

18 Q Watchlist personnel generally have access
19 to the terrorist identify data environment.

20 Right?

21 MS. POWELL: Objection as to form and
22 foundation.

1 He can answer -- I mean, and to the
2 extent it calls for law enforcement privileged
3 information, it exceeds the scope of the FBI
4 deposition notice.

5 A So I don't know what accesses personnel
6 at other agencies have. Watchlist personnel
7 should have access to TIDE.

8 Q And that's where the derogatory
9 information lives. Right?

10 MS. POWELL: Objection as to form,
11 foundation, and misleading.

12 A So I think the data lives in several
13 locations, at least. So it seems like in this
14 example State Department had some derogatory
15 information, other agencies had derogatory
16 information because it refers to the AQAP plot.

17 Yeah.

18 Q I just want to challenge you a little bit
19 on the thing you just said. Let's go, you see the
20 Key Findings. Let's go down a little bit. The
21 Key Findings Emerging From Preliminary Inquiry and
22 Review. There are a bunch of bullet points.

1 Go to the second page of the bullet
2 points, which is the last page of the document.
3 The third bullet point from the top that begins
4 with, "Information sharing." Read that bullet
5 point, and then I want to ask you some questions
6 about it.

7 A Okay.

8 Q Doesn't this say that information sharing
9 was not the problem here with the underwear
10 bomber, which is the opposite of what you just
11 told me?

12 MS. POWELL: Objection as to form and
13 vagueness. But the witness can explain.

14 A I think there's -- I don't think that
15 it's contradictory. I think what I said and what
16 this report says is that the information wasn't
17 brought together in a cohesive narrative. It
18 didn't say that agencies didn't share with other
19 agencies the information. They had it, just it
20 wasn't brought together in a cohesive way that
21 would have led to Abdulmutallab being on the
22 watchlist or no fly.

1 Q But it says that "Relevant all source
2 analysts as well as Washington personnel who
3 needed this information were not prevented from
4 accessing it."

5 A Yeah.

6 Q So it sounds like -- I'm reading that,
7 and I'm asking you to see if I'm reading it right
8 or not. It sounds like Washington personnel had
9 all the information they needed to put somebody on
10 the watchlist, to put the underwear bomber on the
11 watchlist.

12 Is that your reading of this bullet point
13 that we're looking at?

14 MS. POWELL: Objection as to vagueness
15 and form.

16 And I think you can answer to the
17 extent --

18 A It does imply here that they had all the
19 information needed to watchlist him, yes.

20 Q This term, "all source analysts," are you
21 familiar with that term?

22 A Not really, no.

1 Q Do you know what they're referring to in
2 this context, "all source analysts"?

3 MS. POWELL: Objection. Asked and
4 answered.

5 A I don't know.

6 Q Okay. I'm sorry. Now if we go back to
7 that hindsight paragraph which is at the top of
8 Page 5. You see that first sentence where it
9 says, "The State cable nominating
10 Mr. Abdulmutallab did not meet the minimum
11 derogatory standard to the watchlist."

12 Do you see that?

13 A I do, yeah.

14 Q So somebody did try to put the underwear
15 bomber on the watchlist, and that nomination was
16 rejected. Right?

17 MS. POWELL: Objection. Mischaracterizes
18 the document.

19 A Yeah, that's not how I read this. I read
20 this that they went back, some -- the evaluation
21 went back, reviewed the information obtained
22 through the interview, to determine that he

1 didn't -- that based on that information alone, he
2 wouldn't have met the standard.

3 MS. POWELL: I am going to add an
4 objection as to scope here as well.

5 Q We're just talking about whether the
6 watchlist works or not, that's what we're talking
7 about. And we're going to --

8 MS. POWELL: Including apparently a State
9 Department nomination.

10 MR. ABBAS: Okay. I understand.

11 Q So the underwear bomber was never
12 nominated to the watchlist. Correct?

13 MS. POWELL: Objection as to form and
14 foundation and mischaracterizes the document. And
15 to the extent it calls for law enforcement
16 privileged information.

17 But I think the witness can answer if he
18 knows.

19 A So I don't know whether he was nominated
20 or not. It might say that it in here. What I
21 read this to mean is that based on the results of
22 the interview alone, it wouldn't have been

1 sufficient to watchlist Abdulmutallab.

2 MR. ABBAS: Let's take a break. You
3 wanted to take a break, Amy. This is a good time
4 to take a break.

5 (A recess was taken.)

6 MR. ABBAS: Could we pull up the next
7 exhibit. I think it's Exhibit 11.

8 MS. POWELL: You are the man with the
9 exhibits today, Gadeir.

10 MR. ABBAS: Yeah, a lot of exhibits
11 today. Special day. You don't depose the FBI
12 every day, so you've got to make it, you know --
13 squeeze in as much as possible.

14 (FBI Exhibit 11 marked for identification
15 and is attached to the transcript.)

16 Q Exhibit 11 is a report about the Boston
17 Marathon bombing. We'll talk about specific parts
18 in just a moment. But I just wanted to ask you a
19 few general questions about the Boston Marathon
20 bombing.

21 My understanding is that after the Boston
22 Marathon bombing happened, the federal government

1 checked to see whether the bombers were on the
2 watchlist when they committed their bombing.

3 Right?

4 MS. POWELL: Objection as to form.

5 I think the witness can answer as to that
6 much.

7 A My understanding is they did go back and
8 review his watchlist status. Or their watchlist
9 status, I should say.

10 Q And my understanding is that the basis
11 of -- I'm sorry. My understanding is that a
12 foreign country provided the United States with
13 information about one of the Boston bombers.

14 Is that right?

15 MS. POWELL: Objection as to form and
16 foundation, to the extent it calls for law
17 enforcement privileged information.

18 Do you want him to read the report? You
19 can certainly ask him that. But if you're going
20 to ask him first about what he knows, we can do
21 that, too.

22 MR. ABBAS: I want to ask him about what

1 he knows before we read the report, yeah.

2 Q Are you aware that a foreign government
3 gave the United States derogatory information
4 about one of the Boston bombers?

5 MS. POWELL: Objection as to form and
6 foundation, and to the extent it calls for law
7 enforcement privileged or state secrets privileged
8 information.

9 But I think you can actually answer yes
10 or no, if you know.

11 A That is my understanding, yes.

12 Q And based on that information received
13 from a foreign government, the FBI opened an
14 assessment of one of the Boston Marathon bombers.

15 Right?

16 MS. POWELL: Objection as to form and
17 foundation, and to the extent it called for law
18 enforcement privileged information.

19 But I think the witness can answer as to
20 that much, if he knows.

21 A My understanding is that an assessment
22 was opened on him.

1 Q And the assessment was closed without him
2 being watchlisted. Right?

3 MS. POWELL: Objection as to form,
4 foundation, and to the extent it calls for law
5 enforcement privileged information.

6 I am actually going to instruct the
7 witness not to answer that one on grounds of law
8 enforcement privilege.

9 Q All right. Go ahead and read the first
10 page and then tell me when you're done, and I'll
11 ask you a few questions about it.

12 MS. POWELL: The witness should read as
13 much as he needs to for context.

14 A Again, I've read the first page.

15 Q Great.

16 MS. POWELL: Do you need to read more for
17 context?

18 THE WITNESS: It depends what I'm being
19 asked.

20 Q Yeah, I'm going to ask about the first
21 page. We'll talk about the second page after I
22 finish asking the first page.

1 Specifically I'm going to ask about that
2 second-to-last paragraph that begins with,
3 "Tamerlan Tsarnaev and his mother."

4 Do you see that?

5 A Yes.

6 MS. POWELL: Can you blow that up a
7 little bit for me? We're looking at it on
8 different screens, and I can't read that. My bad,
9 but ...

10 MR. ABBAS: Yeah, I'm sorry.

11 MS. POWELL: There we go. I can read it
12 now.

13 Q Okay. Can foreign governments make
14 requests to add people to the watchlist?

15 MS. POWELL: Objection as to form and
16 foundation, and outside the scope of the FBI
17 deposition notice.

18 Do you know the answer to the question?

19 THE WITNESS: I don't.

20 MS. POWELL: Okay.

21 Q All right. I just want to make sure I
22 understand the contents of this paragraph.

1 The reason the Boston Marathon bombers
2 were known to the FBI before the Boston Marathon
3 bombing is because the Russian government told FBI
4 about the Boston -- one of the Boston Marathon
5 bombers. Right?

6 MS. POWELL: Objection as to form and
7 foundation. I think it refers to Tamerlan and his
8 mother, which is ...

9 MR. ABBAS: Yep.

10 A That's how I read the first sentence,
11 yes.

12 Q And in response to the FBI receiving
13 derogatory information about one of the Boston
14 bombers, the FBI opened an assessment? That's an
15 investigative step, right, an assessment?

16 A It's a type of investigation, yes.

17 Q It's the lowest level type of FBI
18 investigation. Right?

19 MS. POWELL: Objection as to vagueness.

20 A It's the level of investigation where you
21 have the ability to use the fewest investigative
22 techniques.

1 Q There's nothing more limited than an
2 assessment that the FBI can open. Right?

3 MS. POWELL: Objection as to form and
4 vagueness.

5 A Yes, an assessment, as far as
6 investigations, has the fewest and least intrusive
7 techniques available to investigators.

8 Q Is the idea of an FBI assessment to
9 determine whether the FBI should initiate an
10 investigation?

11 A That's one of the possible outcomes.

12 Q Another possible outcome is that they
13 close the assessment. Right?

14 A That's another possible outcome, yes.

15 Q Other than opening an investigation or
16 closing an assessment, are there any other
17 possible outcomes to an assessment?

18 A So an assessment could lead to other
19 assessments. But principally -- well, for the
20 most part they end in either opening of
21 investigations or closing of the assessment.

22 Q So when FBI opens an assessment, it could

1 lead to other assessments.

2 Is that right?

3 A It can lead to other assessments, that's
4 right.

5 Q Is an assessment always about a person?

6 A No; there are other type of assessments
7 that are opened.

8 Q Are there assessments of organizations?

9 MS. POWELL: Objection as to form and
10 foundation. Outside the scope of the deposition
11 notice.

12 A Not familiar with any assessments on
13 organizations, no.

14 Q What other kinds of assessments are you
15 familiar with that don't regard a person?

16 MS. POWELL: Objection as to form and
17 vagueness and outside the scope of the deposition
18 notice, and to the extent it calls for law
19 enforcement privileged information.

20 But if there is a general answer, you can
21 give.

22 A You can open an assessment on, for

1 example, a particular threat rather than a person.

2 That's one example.

3 Q Doesn't a person have to make a threat?
4 I don't understand what you mean when you say you
5 make an assessment about a threat.

6 MS. POWELL: Objection as to form and
7 vagueness.

8 But you can answer.

9 A So there could be a general threat
10 emanating out of Yemen, for example. And so you
11 without -- without or in conjunction with opening
12 investigations on the individuals, you could open
13 an assessment on the threat as a whole.

14 Q Does the FBI open assessments on ethnic
15 communities?

16 MS. POWELL: Objection as to form and
17 foundation and to the extent that it calls for law
18 enforcement privileged information.

19 But I suspect the witness can answer to a
20 level of generality.

21 A Not to my knowledge.

22 Q Does the FBI conduct any assessments

1 regarding the ethnic maps that its agents make?

2 MS. POWELL: Objection as to form,
3 vagueness, foundation, outside the scope of the
4 deposition notice, and to the extent it calls for
5 law enforcement privileged information.

6 But I think the witness can probably
7 answer.

8 A I'm not aware of any assessments being
9 opened as a result of an ethnic map.

10 Q When an assessment is closed, it requires
11 an FBI agent to conclude that the person has no
12 link or nexus to terrorism?

13 MS. POWELL: Objection as to form and
14 foundation.

15 Are you asking about this specific
16 document or in general?

17 MR. ABBAS: In general.

18 MS. POWELL: Okay. I think the witness
19 can answer without disclosing privileged
20 information.

21 A So it could be closed as no nexus to
22 terrorism, or it can be closed and -- because it

1 resulted in an investigation.

2 Q Got it. So if it's closed, if an
3 assessment is closed because there's no link or
4 nexus to terrorism, that would mean that the FBI
5 is not opening an investigation. Right?

6 MS. POWELL: Objection as to form and
7 foundation, and mischaracterizes prior testimony,
8 and outside the scope of the deposition notice.

9 A If a link or nexus to terrorism would
10 have been revealed during the assessment, an
11 investigation would be opened.

12 Q Yeah, I get that. We've covered that.
13 So I'm asking the opposite.

14 When there's no link or nexus to
15 terrorism uncovered as part of an FBI assessment,
16 that means that there's no investigation that's
17 opened. Right?

18 MS. POWELL: Objection as to form and
19 foundation. But I think the witness can answer.
20 And objection as to scope.

21 A Then typically it's closed, yes.

22 Q In this case with regards to Tamerlan

1 Tsarnaev, I just want to make sure I'm
2 understanding what this document means.

3 On two separate occasions the Russian
4 government provided derogatory information about
5 Tamerlan Tsarnaev to the U.S. government.

6 Correct?

7 MS. POWELL: Objection as to form and
8 foundation.

9 I think you can answer the question with
10 reference only to nonprivileged information in
11 this document.

12 A So my reading of this is that on two
13 separate occasions the Russian government provided
14 similar -- or I should say identical information
15 to both the CIA and the FBI.

16 Q And yet on one occasion it led to the
17 Boston bomber -- Boston Marathon bomber's
18 watchlisting, and the other one it didn't, even
19 though the information that the government had was
20 identical, as you say, both times.

21 What accounts for that difference?

22 MS. POWELL: Objection, to the extent it

1 calls for law enforcement privileged information
2 and potentially state secrets privileged
3 information.

4 Does the witness know the answer to the
5 question?

6 THE WITNESS: No.

7 MS. POWELL: Okay. Well, his "I don't
8 know," is privileged. But the substantive answer
9 would be.

10 Q Well, either the information was enough
11 to list him or wasn't enough to list him.

12 And so who was right in this instance,
13 was the FBI right to not list Tamerlan Tsarnaev or
14 was the CIA right to try to list him?

15 MS. POWELL: Objection, to the extent it
16 calls for law enforcement privilege or state
17 secrets privileged information, and asked and
18 answered to the extent that I think the witness
19 already said he didn't know what the difference
20 was.

21 Q Go ahead.

22 A So I think the question I would have is,

1 we don't know what other information the CIA had
2 access to and possibly provided to NCTC, like
3 the -- we don't know that.

4 Q Well, doesn't it say in that last
5 paragraph that the CIA provided information
6 obtained from the Russian government to NCTC for
7 watchlisting purposes and to the FBI, DHS, and the
8 Department of State for their information?

9 Do you see that?

10 A I do see that, yeah.

11 Q It just seems like everybody had the
12 information that the Russian government provided.

13 Right?

14 MS. POWELL: Objection. Mischaracterizes
15 prior testimony.

16 A It seems like everyone had the
17 information, but I -- I don't know what
18 specifically the CIA provided NCTC to warrant
19 watchlisting.

20 Q Isn't this the same problem that led to
21 the underwear bomber's not being watchlisted; that
22 the government had information that was adequate

1 to watchlist somebody and didn't?

2 MS. POWELL: Objection. Mischaracterizes
3 the document and mischaracterizes his prior
4 testimony.

5 MR. ABBAS: I'm sorry, let me clarify.
6 Let me clarify.

7 Q When -- between March 2011 and October
8 2011, the government did not put Tamerlan Tsarnaev
9 on a watchlist. Right?

10 MS. POWELL: Objection to the extent it
11 calls for law enforcement privileged information.

12 I think you can answer as to what's in
13 this document.

14 A So it -- yeah, it appears as though the
15 information from the Russian government was
16 provided in March 2011, and in October 2011 he was
17 watchlisted.

18 Q I think in the underwear bomber's case it
19 was -- it was six week -- I'm sorry, five weeks,
20 about five weeks between when the underwear
21 bomber's father met with Embassy officials and
22 when the underwear bomber tried to commit his

1 atrocity. Here it's six months, six months that
2 went by between the federal government receiving
3 derogatory information, and that derogatory
4 information leading to a person's listing.

5 Do you see the parallel between the
6 problems that gave rise to the shortcomings that
7 this Boston Marathon bombing regarding memo is
8 about and the White House memo we just finished
9 reviewing about the underwear bomber?

10 MS. POWELL: Objection as
11 mischaracterizes the document and/or prior
12 testimony and that a comprehensive answer would
13 call for a law enforcement privileged or state
14 secrets privileged information.

15 But I think the witness can answer as to
16 his knowledge.

17 A So I understand the conclusion drawn from
18 the review of the Abdulmutallab watchlisting
19 situation.

20 I don't -- I guess I just don't
21 understand what the question is here. I don't see
22 these as necessarily parallel examples.

1 Q Okay.

2 A I think what -- I think what they had --
3 the information they had in Abdulmutallab was much
4 more significant, like that the government, the
5 U.S. government as a whole had, that not just that
6 his father was concerned about him coming under
7 the influence of extremists, but also that he was
8 potentially part of a homeland plot. That seems
9 to be more significant than what I know of the
10 information that the Russian government provided
11 to the U.S. government in 2011.

12 Q But ultimately the information that the
13 Russian government provided, which was
14 substantively identical, as you said, in October
15 2011 as it was in March 2011, led to one of the
16 Boston Marathon bombers' listing. So that's why
17 I'm asking, is because in the underwear bomber
18 incident it seems like, as you're saying and as we
19 reviewed in the White House memo, there was
20 adequate information to list him, but the
21 government didn't.

22 And here the same information was

1 provided twice, in one instance it led to his
2 litigation and in another it didn't.

3 So you don't see any parallels between
4 the underwear bomber incident and the Boston
5 Marathon bomber incident?

6 MS. POWELL: Objection. Asked and
7 answered.

8 A So again, and maybe it says it somewhere
9 else in the document, but I don't see where it
10 implies that the CIA provided the -- provided only
11 the information provided by the Russian government
12 to NCTC. And in their -- in that, in the instance
13 of the CIA, they received the information in
14 September 2011 and watchlisted him in October
15 2011, which is one month.

16 Q Right. Do you see how it describes the
17 information that the Russian government provided
18 in September 2011 as substantively identical to
19 the information it provided --

20 A It did. No, what I'm saying is, so they
21 live -- those individuals lived overseas for a
22 substantial part of their life. So the CIA then,

1 because they're focused overseas, and not
2 collecting on people in the United States, they
3 may have had additional information. And I don't
4 know that to be the case. But they may have had
5 additional information that the FBI did not have.
6 And then they provided the Russian information and
7 additional findings to NCTC that watchlisted him.

8 I don't know what the CIA provided to
9 NCTC.

10 Q What you just said is just pure
11 speculation. You have no idea at all what CIA
12 provided. Right? The only --

13 A No, I don't. I don't have any idea.

14 Q The only basis for your knowledge about
15 what the CIA was provided about Tamerlan Tsarnaev
16 is from the document we're looking at right now.

17 Right?

18 A And the fact that he was watchlisted as a
19 result of that.

20 Q Did the watchlist interfere with his
21 terrorism plot in any way?

22 MS. POWELL: Objection as to form,

1 vagueness, foundation, and to the extent it calls
2 for law enforcement privileged information.

3 I don't know if there is a general answer
4 you can give.

5 A No, I don't know if his inclusion on the
6 watchlist hindered his ability to carry out this
7 attack.

8 Q Is that something the FBI has considered
9 in assessing the efficacy of the watchlist,
10 whether the watchlist inhibits in some way a
11 person's ability to commit an act of terrorism?

12 MS. POWELL: Objection as to form and
13 vagueness.

14 Are you talking about in this instance or
15 in general?

16 MR. ABBAS: In general.

17 MS. POWELL: Objection to the extent it
18 calls for deliberative process privileged
19 information.

20 But I think the witness can answer at a
21 level of generality.

22 A I don't know if they look at that

1 specifically, like whether it's prevented this
2 attack or others like as a -- as a measure of
3 efficacy.

4 Q It seems like a no-brainer, to see if the
5 consequences of being on the watchlist inhibit,
6 mitigate somebody's ability to commit an act of
7 terrorism. The FBI hasn't assessed whether it's
8 attaching the right consequences to a person's
9 watchlist status to make the list effective?

10 MS. POWELL: Objection as to form and
11 foundation and vagueness.

12 A So I think that's difficult to determine.
13 Because when someone is on the watchlist and
14 they're the subject of an FBI investigation, that
15 sometimes results in their arrest prior to them --
16 as part of being on the watchlist.

17 So we do arrest people, attacks are
18 prevented by the FBI.

19 Q I know that, Mr. Langham. I know that,
20 that you make arrests and that you prevent some
21 acts of terrorism through arrest.

22 What I'm asking you about is the

1 watchlist. Okay? I'm asking you specifically
2 about the watchlist.

3 Does the FBI have any sense that the
4 treatment that people experience as a result of
5 their watchlist status, the consequences that flow
6 from having a watchlist status, whether those
7 things have had any impact on any person's ability
8 to commit an act of terrorism?

9 MS. POWELL: Objection as to form,
10 foundation, vagueness, misleading, some other
11 things.

12 But the witness can try to answer.

13 A So what I can say is, we arrest people
14 and disrupt attacks of people who are on the
15 watchlist on a regular basis.

16 I don't know -- and as part of -- so the
17 watchlist is just one tool that prevents, in the
18 case of no subjects who are no fly, it prevents
19 them from traveling and because they pose a threat
20 to aviation or one of several other things.

21 So it's an important tool that
22 contributes to the process, a process that leads

1 to arrests and disruptions of international
2 terrorism subjects.

3 Q Let's go to the 2023 rog responses. I
4 think -- I can't remember if that's Exhibit 8 or
5 Exhibit 9?

6 MS. POWELL: It's Exhibit 9. I think
7 it's Exhibit 9.

8 MR. ABBAS: Thank you.

9 MS. POWELL: I'm here to help.

10 Q Page 24 when we get there, of Exhibit 9.

11 MR. ABBAS: Are you there? Do you think
12 you could change the exhibit to Exhibit 9.

13 Q All right. I want you to review the
14 defendant-wide rog 3 -- I'm sorry, let's go to
15 Page 24, the bottom of Page 24. Yeah.

16 You see defendant-wide rog Number 3?

17 A I do, yeah.

18 Q Okay. Read it, let me know when you're
19 done, and then we'll take you on a tour of this
20 answer.

21 A Read the one sentence?

22 Q Yeah.

1 A Okay.

2 Q So again I'm going to ask you some
3 questions about efficacy. Okay? And now we're
4 going to skip down to the FBI's answer, which
5 begins on Page 28. It's 28 and then it continued
6 onto 29. So I'm just going to ask you to read it.
7 When you're done I'll have a lot of questions for
8 you.

9 A Can you move it up? Okay.

10 Done.

11 Q You're done?

12 A Yeah, I'm done.

13 Q You see these disruptions, it has a bunch
14 of years and it has disruptions?

15 A Yeah, I do.

16 Q How many of these disruptions are the
17 result of the watchlist alone?

18 MS. POWELL: Objection as to form and
19 foundation and vagueness. And precise numbers, if
20 they were available, would likely be protected by
21 the law enforcement privilege.

22 But I suspect the witness can give his

1 general explanation.

2 A Yeah, I don't think any results or
3 disruptions occur solely based on watchlist, the
4 watchlist.

5 Q Let's go to -- okay. All right. I
6 remember. Let's go back to Exhibit 11. Okay.
7 Exhibit 11.

8 And do you see that the paragraph, second
9 to the bottom paragraph, the last sentence where
10 it says they closed the assessment three months
11 later having found no link or nexus to terrorism.

12 Do you see that?

13 A The third paragraph, last sentence?

14 Q Yeah.

15 A Yeah, I do see that. Yeah.

16 Q When I see that language about link or
17 nexus to terrorism, that reminds me of the
18 "related to" language that was excised from the
19 watchlist inclusion standard.

20 Is that where that language comes from?

21 MS. POWELL: Objection to the --
22 actually, I think you can answer that.

1 A I don't think there's any relation
2 between that "related to" language and this
3 language here.

4 Q Are you sure about that?

5 A Yeah, I mean, what they're trying to say
6 here is that information was given to the FBI that
7 suggested that they were terrorists or related to
8 terrorists or associated with terrorists. We
9 conducted an assessment of them and didn't find
10 anything to substantiate that. So that's how I
11 read "no link or nexus to terrorism."

12 If we would have seen additional links,
13 so additional associates of Tamerlan's, for
14 example, who were also subjects of investigations,
15 that would have been a link or a nexus to
16 terrorism, and we wouldn't have used that language
17 here.

18 Q I think the overview document I believe
19 was Exhibit 2, or Exhibit 3.

20 MS. POWELL: I have it as Exhibit 3.

21 Q Let's go to the bottom of Page 4 of
22 Exhibit 3. Okay. I'm sorry, one more page. Page

1 5. I apologize. Okay.

2 Oh, no. No. I'm sorry. The page above
3 it, Page 4. We're not functioning at a high level
4 anymore here. I apologize for that.

5 All right. Do you see this Nominations
6 to the No Fly and Selectee Lists section?

7 A I do.

8 Q Between the no fly list and the selectee
9 list, the no fly list is harder to get on. Right?
10 It's more restrictive?

11 MS. POWELL: Objection, to the extent it
12 calls for law enforcement privileged or SSI.

13 I think you can answer as to whether it's
14 harder.

15 A I would just characterize it as meeting
16 different criteria.

17 Q You know, I'm asking about -- I'm asking
18 the FBI's designee, who is an executive at the
19 largest law enforcement agency I believe in the
20 world, to compare --

21 MS. POWELL: Hold it. Not even close.

22 MR. ABBAS: Not even close?

1 A Just for example, we have 11,000 agents.
2 NYPD has 40,000 officers. Just to give you a
3 little bit of perspective there.

4 Q I withdraw my idle speculation. Okay.
5 The no fly list is dealing with a more
6 serious threat than the selectee list. Right?

7 MS. POWELL: Objection. So I am going to
8 instruct the witness not to characterize the
9 selectee list standards, which are protected by
10 the law enforcement privilege and sensitive
11 security information. He is welcome to
12 characterize the no fly list criteria, if that is
13 helpful.

14 A Yeah, so the no fly list are individuals
15 who are thought to be a threat to several
16 different categories, as it lays out here. And it
17 is the most restrictive. Someone on the no fly
18 list is not allowed, except under certain
19 circumstances, to board a plane.

20 Q We'll talk about those certain
21 circumstances in just a moment.

22 Why is it that you can tell me what the

1 no fly list standard is, but you can't tell me
2 what the selectee list standard is?

3 MS. POWELL: Objection as outside the
4 scope, to the extent you are asking for the basis
5 of the privilege assertion.

6 If he knows the answer he can certainly
7 give it, but ...

8 THE WITNESS: I don't know why.

9 Q Has there been any -- my understanding is
10 that the no fly list inclusion standard hasn't
11 always been public.

12 Is that right?

13 MS. POWELL: You can answer if you know.

14 A I don't know.

15 MR. ABBAS: You know, again, these are
16 basic questions about the topics that regard the
17 inclusion standards, and I think he should know.
18 He should definitely know whether they have been
19 made public or whether it's always been secret.
20 That's certainly --

21 A They're public. They're public.

22 Q Right. I'm asking about whether for a

1 period of time in the watchlist history -- did the
2 FBI keep secret the no fly list inclusion
3 standard?

4 MS. POWELL: Objection as to form and
5 foundation and outside the scope to the extent
6 you -- I don't think the topics include a full
7 history of the evolution of the assertions of the
8 privilege in these cases.

9 But he can answer, if he knows.

10 A I don't know when it was made public. I
11 just know that it is public currently.

12 Q Do you know whether it was kept secret
13 for a period of time?

14 MS. POWELL: Objection. Same objections
15 as to scope and form and vagueness.

16 A I don't know if it was intentionally kept
17 secret or if it was just not made public.

18 Q Did the FBI decide not to publicize the
19 selectee list inclusion standard?

20 MS. POWELL: Objection as to form and
21 foundation and outside the scope. I'm sorry, you
22 mean currently?

1 MR. ABBAS: Let me just withdraw that
2 question.

3 Q I know, Mr. Langham, that your counsel is
4 going to object to you answering this question,
5 but I'm going to ask it just for the record and
6 just, you know, I'm sure she is going to object.

7 What is the selectee list inclusion
8 standard?

9 MS. POWELL: I instruct the witness not
10 to answer on the grounds of law enforcement
11 privilege and sensitive security information.

12 Q Who made the selectee list inclusion
13 standard?

14 MS. POWELL: Objection as to form and
15 vagueness and to the extent it calls for law
16 enforcement privileged or sensitive security
17 information.

18 There may be a high-level answer the
19 witness can give.

20 A So I don't know for certain. I could
21 assume that the Watchlisting Advisory Council made
22 recommendations to the deputy's committee on

1 selectee criteria, but I don't know that for sure.

2 Q You testified earlier that the revision
3 to the TSDS inclusion standard was done by the
4 National Security Council.

5 Is that right?

6 MS. POWELL: Objection. Mischaracterizes
7 prior testimony.

8 A So I believe I said that that is a way
9 that changes to watchlisting policy like the --
10 like the reasonable suspicion standard can occur,
11 is by a recommendation from the Watchlisting
12 Advisory Council, which is then reviewed and
13 approved or not approved by the deputy's
14 committee.

15 Q So the deputy's committee of the National
16 Security Council, they're the ones that ushered in
17 the revised TSDS inclusion standard. Right?

18 MS. POWELL: Objection as to form and
19 vagueness.

20 A I assume, based on my knowledge of the
21 process, that that's what occurred.

22 Q Do you assume based on your knowledge of

1 the process that's also how the selectee list
2 inclusion standard was established?

3 MS. POWELL: Objection as to form and
4 foundation.

5 I think you can answer.

6 A I think that would be a reasonable
7 assumption.

8 Q Okay. Now I want to ask you about this
9 last sentence on Page 4 where it gives a rationale
10 for why the selectee criteria is not included, not
11 disclosed publicly.

12 Do you see that sentence?

13 A I do, yeah.

14 Q This is not going to surprise you or your
15 esteemed counsel that I don't believe that. I
16 think -- I have doubts about why your -- why the
17 FBI is withholding the selectee list criteria.

18 My theory is that the criteria is so
19 vague and embarrassing, the government doesn't
20 want to disclose it. That's what I think. Okay?
21 I understand, based on my colleague's laughter,
22 that she doesn't agree with that. But you've got

1 to understand that I don't understand why the
2 selectee list criteria is different, poses a
3 different risk than the no fly list criteria.

4 So I want you to explain to me why the
5 selectee list criteria could give known or
6 suspected terrorists information that may assist
7 them in developing strategies to circumvent
8 security screening, but the no fly list criteria
9 doesn't.

10 MS. POWELL: Objection to the extent the
11 question calls for law enforcement privileged and
12 SSI information. A comprehensive answer certainly
13 would.

14 Also objection as outside the scope of
15 the deposition, to the extent you are asking about
16 the basis for privileges.

17 But I think the witness can give a
18 nonprivileged answer, if he knows.

19 A So what I would say is that a reasonable
20 suspicion standard is specific and not vague, and
21 the no fly inclusion standard and requirements is
22 specific and not vague. So then why would the

1 selectee inclusion list be vague? Like, I don't
2 understand why you think it's vague and
3 embarrassing.

4 Q Because I think I know what it is. I've
5 looked at these documents, so I think I know what
6 it is.

7 A Why would we have it book-ended for
8 specific language for the no fly and the
9 reasonable suspicion standard, and then have vague
10 and embarrassing language for the selectee
11 standard? I don't understand.

12 MS. POWELL: Gadeir, before we keep going
13 on this and you're welcome to, but you've got
14 about nine minutes left on the record.

15 MR. ABBAS: Are you sure about that? Is
16 it really nine minutes?

17 MS. POWELL: I have nine minutes, yes.

18 MR. ABBAS: Let's go off the record and
19 figure out how much time we have for this final
20 little sprint.

21 MS. POWELL: That is fine if we want to
22 figure that out while we're off the record. I am

1 going to have a little bit of redirect, and if you
2 want to save some time for after my redirect, you
3 might want to do so. I'm not going to have much,
4 though, so, you know ...

5 MR. ABBAS: I think the redirect doesn't
6 count towards my seven hours.

7 MS. POWELL: No. But whatever happens
8 after my redirect does.

9 (A recess was taken.)

10 MR. ABBAS: Let's mark this document as
11 Exhibit 12. Is that right? Or Exhibit 13.
12 Exhibit 12. Okay.

13 Exhibit 12, which was produced by the
14 government a few days ago, is the Strategic
15 Intelligence Assessment and Data on Domestic
16 Terrorism, dated June 2023.

17 (FBI Exhibit 12 marked for identification
18 and is attached to the transcript.)

19 BY MR. ABBAS:

20 Q Are you familiar, Mr. Langham, with the
21 FBI's strategic intelligence assessment on data --
22 and data on domestic terrorism?

1 A Am I familiar with this document?

2 Q Yes.

3 A I don't -- I don't know. If you could --
4 I don't -- I'd have to see the top of it. But I'm
5 not sure if I've seen this.

6 Q Let's go to the top of it, that's fine.
7 So the second page is the cover page of this
8 document. Yeah.

9 A Oh, yeah, I've seen this. Yeah.

10 Q You've seen this. Okay. So now let's go
11 back to Page 25, or 26 I guess of the PDF.

12 You see this chart of different kinds of
13 domestic terrorism?

14 Do you see it?

15 A I do, yeah.

16 Q Are you familiar with these investigative
17 classifications?

18 A I am, yes.

19 Q If somebody was, like, a religious
20 extremist, where would they fit into one of these
21 investigative classifications?

22 A So are you talking about an international

1 terrorist or a domestic terrorist?

2 Q I don't know. I'm asking you.

3 Would somebody that is motivated by
4 religious extremism fit into one of these
5 categories that we're looking at on Page 26?

6 MS. POWELL: Objection as to form.

7 A Yes. So I don't know that they would
8 necessarily fit into any -- I don't know that a
9 religious domestic terrorism would fit into any of
10 these categories.

11 Q Are there other categories regarding
12 international terrorism?

13 A Yes. So these are domestic terrorism
14 categories or classifications. International
15 terrorism classifications are different.

16 Q Do you remember when we were talking
17 about -- when we talked about the FBI
18 investigating Muslims for terrorism and you
19 acknowledged of course that's something that FBI
20 has done?

21 MS. POWELL: Objection. Mischaracterizes
22 testimony, but ...

1 A I remember saying as part of I think a
2 different -- a longer answer, that we investigate
3 Muslims for connections to international
4 terrorism, yes.

5 Q So -- okay. Is that always the case,
6 that the investigations of Islamic terrorism are
7 international terrorism investigations? Is that
8 how they're classified?

9 MS. POWELL: Objection as to form and
10 vagueness.

11 A Islamic terrorists are considered
12 international terrorists by FBI definitions, yes.

13 Q Got it. Okay. Let's go to Exhibit 1,
14 which is the 30(b)(6) notice. We're so close to
15 the end, Mr. Langham. I really appreciate your
16 patience today. We're very close.

17 All right. Do you see Topic 12, no fly
18 list waiver?

19 A I do see that, yeah.

20 Q Are you familiar with this process
21 whereby people on the no fly list are allowed to
22 fly?

1 A I am familiar with it, yes.

2 Q Who gets to decide whether people on the
3 no fly list can fly?

4 MS. POWELL: Objection as to form and
5 foundation, and to the extent it calls for law
6 enforcement privileged information or SSI.

7 I think there -- and to the extent it's
8 outside the scope of the FBI's deposition notice.
9 I think there is an answer the witness can give,
10 though.

11 A So under very limited circumstances an
12 individual on the no fly list can be permitted to
13 fly over U.S. airspace.

14 In general, the way that that occurs is
15 that an individual -- a U.S. person oversees who's
16 on the no fly list is provided an opportunity to
17 get back to the U.S.

18 Q Do you tell, does the FBI tell people on
19 the no fly list that it has this secret waiver
20 process?

21 MS. POWELL: Objection as to form and
22 foundation. And mischaracterizes prior testimony.

1 The witness can answer to the extent he
2 knows.

3 A So the way that it typically works is
4 that they're referred to the Embassy for
5 assistance.

6 Q So they're not told what assistance the
7 Embassy will provide. They're just told to go to
8 the Embassy?

9 A Well, so what assistance the FBI can
10 provide depends on the specific facts of that
11 subject and their status.

12 Q Is the FBI aware of any incident, any
13 security incident, regarding the waivers that have
14 been issued that have allowed people on the no fly
15 list to fly?

16 MS. POWELL: Objection as to form and
17 vagueness, and to the extent it calls for law
18 enforcement privileged or SSI information.

19 I think you can answer as to whether or
20 not you're aware without contemplating privileged
21 information.

22 A So I'm not aware of any security

1 incidence related to travelers on a one-time
2 waiver return home.

3 Q Have any of you watchlist folks
4 considered a two-time waiver or a three-time
5 waiver?

6 MS. POWELL: Objection as to form and
7 foundation, and to the extent it's asking for
8 deliberative process privileged information.

9 Whether it's been considered I would
10 direct the witness not to answer.

11 Q Why not have a two-time waiver or a
12 three-time waiver from the no fly list?

13 MS. POWELL: Objection as to form and
14 foundation, to the extent a comprehensive answer
15 could call for law enforcement privileged or SSI
16 information.

17 But the witness can answer, if he knows.

18 A So I think the terminology is wrong. I
19 think regardless of how many times an individual
20 is given a waiver, each time they're still given a
21 one-time waiver. You wouldn't give an individual
22 a two-time waiver to fly twice. They would just,

1 like, get one-time waiver, get to the U.S., and
2 then their status would be reverted back to no
3 fly.

4 Q So you give one person multiple one-time
5 waivers.

6 Is that what you're saying?

7 MS. POWELL: Objection to form and
8 foundation and outside the scope of the FBI's
9 deposition.

10 A And I am not familiar with any instances
11 where we've given multiple one-time waivers.

12 Q Okay. Last question. Everybody on the
13 selectee list is in the TSDB. Correct?

14 MS. POWELL: Objection as to form, but I
15 think the witness can answer.

16 A Yes.

17 Q But not everybody on the TSDB is on the
18 selectee list. Right?

19 A Yes.

20 Q Everybody on the no fly list is on the
21 TSDB. Right?

22 A Yes.

1 Q But not everybody on a TSDB is on the no
2 fly list. Right?

3 A Yes.

4 Q The selectee list is a bigger group of
5 people than the no fly list. Correct?

6 MS. POWELL: That's time, Gadeir. We
7 have used up the rest of that time. I'm going to
8 go ahead and assert substantive security
9 information. Objection.

10 If you have one more question to ask, go
11 ahead. But then I've got redirect, and I think
12 you're out of time.

13 MR. ABBAS: I'm good.

14 Thank you, Mr. Langham. I appreciate it.

15 THE WITNESS: Thank you.

16 EXAMINATION BY COUNSEL FOR DEFENDANTS

17 BY MS. POWELL:

18 Q I am going to keep this fast, or as fast
19 as I can, given that I can't decipher my own
20 chicken scratch here.

21 I have two questions related to our
22 earlier discussion of Sentinel. If the FBI is

1 submitting a modification nomination in Sentinel,
2 does a human being submit that nomination?

3 A My understanding is, yes, a human being
4 submits that, that modification.

5 Q So it is not like some automatic process
6 that would make a modification go through without
7 a case agent or someone actually submitting the
8 modification nomination. Correct?

9 A That's right. That's right.

10 Q My other Sentinel-related question is --
11 I apologize ahead of time, but a bit of a
12 hypothetical.

13 If there were someone on the watchlist
14 that another agency had nominated, say -- I mean,
15 pick your alphabet soup, the NSA or CIA or whoever
16 else nominates in the IC. They're outside the
17 U.S. and had no known connection to the U.S. and
18 no interaction with the FBI, they would not
19 necessarily have a file in Sentinel. Correct?

20 A That's correct.

21 Q So not everyone on the TSDS is in
22 Sentinel. Correct?

1 A That's correct.

2 Q I had two questions loosely related to
3 NCIC.

4 We talked a lot about the KST file and
5 NCIC?

6 A Right.

7 Q Do you know if it now goes by a different
8 acronym?

9 A Yeah. It now goes by the acronym TSC.

10 Q That's TSC file.

11 Is that right?

12 A TSC file, yeah.

13 Q And to your knowledge, is that a
14 substantive change or a nomenclature change?

15 A To my knowledge, that's a name-only
16 change.

17 Q We talked earlier about law enforcement
18 agencies or many law enforcement agencies having
19 access to NCIC. In order for a law enforcement
20 agency to get access to NCIC and the people within
21 that law enforcement agency, they have to do more
22 than simply be a law enforcement agency. Correct?

1 A That's right, yes.

2 Q There are other standards for who can get
3 access in NCIC?

4 A Right. And they need to apply.

5 Q I think my only remaining question, if
6 you know, are you aware whether TIDE, which we
7 talked about earlier, is an NCTC-managed database?

8 A I know -- my understanding is it's not an
9 FBI-managed database, and that it's an IC database
10 that probably belongs to NCTC, but I can't say
11 that definitively.

12 MS. POWELL: Okay. That's what I got. I
13 think that's a wrap here.

14 MR. ABBAS: Thanks, everybody.
15 Appreciate it Debbie, appreciate it, Lhassan.

16 COURT REPORTER: Ms. Powell, do you need
17 a copy of the transcript?

18 MS. POWELL: I absolutely need a copy of
19 the transcript, but regular service should be
20 fine.

21 MR. ABBAS: Is there any way we could get
22 a rough tomorrow, is that possible?

1 MS. POWELL: We will want to read and
2 sign, to be clear, but just usual.

3 COURT REPORTER: And do you need a rough,
4 Ms. Powell?

5 MS. POWELL: No. No.

6 (Off the record at 7:13 p.m. EDT.)

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ACKNOWLEDGMENT OF DEPONENT

I, RICHARD J. LANGHAM, do hereby
acknowledge that I have read and examined the
foregoing testimony, and the same is a true,
correct and complete transcription of the
testimony given by me, and any corrections appear
on the attached Errata sheet signed by me.

(DATE)

(SIGNATURE)

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Debra A. Whitehead, the officer before whom the
3 foregoing proceedings were taken, do hereby certify
4 that the foregoing transcript is a true and correct
5 record of the proceedings; that said proceedings
6 were taken by me stenographically and thereafter
7 reduced to typewriting under my supervision; that
8 reading and signing was requested; and that I am
9 neither counsel for, related to, nor employed by any
10 of the parties to this case and have no interest,
11 financial or otherwise, in its outcome.

12 IN WITNESS WHEREOF, I have hereunto set my hand and
13 affixed my notarial seal this 26th day of April,
14 2024.

15

16 My commission expires:

17 April 30, 2027

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E-NOTARY PUBLIC IN AND FOR THE

22

STATE OF MARYLAND

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